No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EXXON CORPORATION AND THE LOUISIANA LAND AND EXPLORATION COMPANY,

Appellants,

v.

RALPH EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.

Appellees.

On Appeal from the Supreme Court of the State of Alabama

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether producers of oil and gas in Alabama are denied the equal protection of the law guaranteed by the Fourteenth Amendment to the Federal Constitution by a severance tax statute which defines producers of oil and gas and royalty owners as members of one class for purposes of imposing such a tax but which then exempts royalty interest owners from payment of the tax imposed and taxes the working interest owners on the value of production attributable to such royalty interest owners.

2. Whether producers of oil and gas in Alabama are denied the equal protection of the law guaranteed by the Fourteenth Amendment to the Federal Constitution by a severance tax statute which forces producers as a class to bear the burden of a tax imposed on royalty interests and which distributes this additional tax burden unequally among the working interest owners.

LIST OF PARTIES TO PROCEEDINGS BELOW

Appellee Below:

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama.

Appellants Below: 1/

Exchange Oil and Gas Corporation; Exxon Corporation; Getty Oil Corporation; The Louisiana Land and Exploration Company; Placid Oil Company; Placid Refining Company, Inc.; Phillips Petroleum Corporation; and Union Oil Company of California. 2/

1/ Although there were eight appellants below, only Exxon Corporation and The Louisiana Land and Exploration Company bring this appeal.

Also, from the trial court record it is not entirely clear whether Warrior Drilling and Engineering Company, Inc., was a party in the proceedings before that court. It is clear, however, that Warrior Drilling and Engineering Company, Inc., was not a party to the proceedings before the Supreme Court of Alabama from which this appeal is taken. Nonetheless, Warrior Drilling and Engineering Company, Inc., has been served with a copy of the Notice of Appeal to the Supreme Court of the United States and this Jurisdictional Statement.

2/ The listing required by Rule 28.1 naming all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of Appellants is contained in Appendix I.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The opinion of the Supreme Court of Alabama for which review is sought was entered on December 10, 1982. This opinion appears in the Official Reports for Alabama at 426 So.2d 814 (Ala. 1982), and Volume 17 of the Alabama Bar Reports at page 386, and is included herein as Appendix A. As detailed in the Statement of the Case below, there were numerous Orders entered by the Circuit Court of Montgomery County, Alabama, as successive tax refund suits were filed. These Orders do not appear in any official or unofficial report, but are included herein as Appendix D.

JURISDICTIONAL BASIS OF THIS APPEAL

This is an appeal from a final judgment of the Supreme Court of Alabama holding constitutional an Alabama oil and gas severance tax which was challenged by the appellants herein as being in conflict with the Constitution of the United States.

The opinion and judgment of the Supreme Court of Alabama were entered on December 10, 1982. An Order was entered February 11, 1983, denying appellants' timely application for rehearing. The Notice of Appeal to the Supreme Court of the United States was timely filed with the Clerk of the Supreme Court of Alabama on May 2, 1983, and was also timely filed with the Clerk of the Circuit Court of Montgomery County, Alabama on May 2, 1983.

This Court's jurisdiction over this appeal is conferred by 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES

This appeal involves the constitutionality of an Alabama oil and gas severance tax statute under the Equal Protection

Clause of the Fourteenth Amendment, which provides, in part, that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The challenged statute is Act No. 708 of the 1980 Regular Session of the Alabama Legislature. It is set forth in full in Appendix F.

STATEMENT OF THE CASE

The Case

Appellants are producers of oil and gas in Alabama who seek on federal constitutional grounds to invalidate an Alabama severance tax amendment which, by its provisions, increased the Alabama oil and gas severance tax and exempted royalty owners from the payment of that increase. Such an exemption thereby forces other producers, including the Appellants herein, to bear the burden of the tax increase that is attributable to the production of the royalty owners.

The challenged statute was enacted as Act 708 by the 1980 Regular Session of the Alabama Legislature and was in effect from May 28, 1980, until repealed February 1, 1983. It is, in essence, the successor statute to an act passed by the 1979 legislature. This earlier act, Act 434, was challenged, in part, by these Appellants on the identical constitutional grounds raised herein in an appeal which is presently under consideration by this Court in consolidated cases numbers 81-1020 and 81-1268. Like Act 434, Act 708 increased the Alabama oil and gas severance tax *and* exempted royalty owners from paying the tax.

Appellants paid their liability for the increase under protest and filed tax refund suits seeking to invalidate the tax

and recover the protested payments in the Circuit Court of Montgomery County, Alabama. Successive similar suits were filed as additional taxes were paid and protested. In all, some fifty-four (54) lawsuits were filed by Appellants and plaintiffs similarly situated. These were consolidated for trial and tried upon the basis of a written stipulation. On September 29, 1981, the trial court ruled in favor of the Appellee, holding Act 708 to be "constitutional and valid in its entirety." Appendix D at p. 2d. The trial court decision was based upon the conclusion that Act 708 "is nearly identical to Act No. 434." Since the Alabama Supreme Court held Act 434 valid in its entirety in *Eagerton v. Exchange Oil and Gas Corporation*, 404 So.2d 1 (Ala. 1981), the trial judge reasoned that Act 708 must also "be constitutional and valid in its entirety." Appendix D at p. 2d. However, as previously noted, the correctness of the Alabama Supreme Court's opinion upholding the constitutionality of Act 434 is presently under consideration by this Court in appeal numbers 81-1020 and 81-1268.

As additional severance tax liabilities were incurred, Appellants and other parties similarly situated filed successive tax refund suits identical to those previously ruled upon by the trial court. Relying on its decision in the initial set of cases and the Alabama Supreme Court's opinion in *Eagerton v. Exchange Oil and Gas Corporation, supra*, the trial court entered a series of orders rejecting Appellants' constitutional attacks on Act 708. Appendix D at pp. 4d-19d.

On November 25, 1981, Appellants filed an appeal with the Supreme Court of Alabama challenging the trial court's decision in the initial set of fifty-four (54) cases. As the Circuit Court of Montgomery County, Alabama, entered successive orders denying the relief requested by Appellants in their

additional suits filed as severance taxes were incurred, Appellants and other parties took further appeals to the Supreme Court of Alabama. These successive appeals were consolidated with all other such appeals before the supreme court.

Following briefing and oral argument, the Supreme Court of Alabama, on December 10, 1982, issued an opinion affirming the orders entered by the Circuit Court of Montgomery County, Alabama. It, like the trial court, held Act 708 constitutional against the attacks raised herein largely on the basis of its prior decision in *Eagerton v. Exchange Oil and Gas Corporation, supra.* Appellants then filed a timely application for rehearing and, at the same time, asked the Supreme Court of Alabama to withdraw its December 10, 1982, opinion and grant a continuance of the appeal pending resolution of the constitutional issues raised before the Supreme Court of the United States in the Act 434 appeal. These requests were denied without comment on February 11, 1983. The Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of Alabama on May 2, 1983.

The questions and grounds presented for review in this appeal were raised in the initial complaints filed herein, were presented in briefs filed with the trial court prior to its decision and were renewed in briefs filed with the Supreme Court of Alabama. Both the trial court and the state supreme court rejected appellants' arguments that Act 708 was invalid as being in violation of the Equal Protection Clause, largely on the basis of *Eagerton v. Exchange Oil and Gas Corporation, supra.*

The Facts

Appellants are lessees and working interest owners engaged

in oil and gas production in the state of Alabama. In addition, Appellant Exxon Corporation operates certain wells or production units and also owns various royalty interests.

The challenged Alabama severance tax statute (Act 708 of the 1980 Regular Session, Alabama Legislature), like its predecessor, Act 434, imposed an oil and gas severance tax increase from four percent to six percent upon Appellants as producers of oil and gas. Also, again like Act 434, it contained the following provision exempting royalty owners from the two percent increase in taxes:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

1980 Ala. Acts No. 708, Sec. 1.

Under the application of Act 708, Appellants paid under protest to the state the entire two percent increase in severance tax applicable to the entire production of their leases within Alabama. There was no deduction of any amount with respect to the royalty interests that were statutorily exempt from paying the increase.

Evidence introduced at trial pursuant to the parties stipulation, Appendix G, clearly indicated that working interest owners, such as Appellants, and royalty interest owners are members of the same class of persons - i.e. those persons engaged in the common venture of producing oil and gas for the mutual benefit of all parties. See Affidavit of Philip E. LaMoreaux, Appendix H. The evidence further showed that there was no valid reason why the Alabama Legislature

should exempt royalty owners from paying the tax imposed by Act 708. Rather, the trial testimony was to the effect that there was an affirmative reason why royalty owners should not pay any less tax. Specifically, if the tax burden falls lighter upon the royalty interest owner and heavier upon the working interest owner, then the tax discourages oil and gas exploration and production since working interest owners bear the costs and risks of production while the royalty interest owners take their royalty free of such burdens. *Id.*

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. THE ALABAMA SEVERANCE TAX STATUTE, WHICH DEFINES PRODUCERS AS ONE CLASS, UNCONSTITUTIONALLY DISCRIMINATES AGAINST WORKING INTEREST OWNERS NOT ONLY BY EXEMPTING ROYALTY INTEREST OWNERS FROM PAYMENT OF THE TAX IMPOSED BY ACT 708, BUT ALSO BY TAXING WORKING INTEREST OWNERS ON THE VALUE OF PRODUCTION ATTRIBUTABLE TO SUCH ROYALTY INTEREST OWNERS, ALL IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o state shall . . . deny to any person . . . equal protection of the laws." This constitutional prohibition "does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). Indeed, when state taxation is involved, "the States have large leeway in making classifications

and drawing lines which in their judgment produce reasonable systems of taxation." *Id.* This general rule, however, is tempered by the qualification that while states do have wide discretion in laying their taxes and making classifications thereunder, once a system of classification has been established, "the Fourteenth Amendment protects those within the same class against unequal taxation; all are entitled to like treatment." *Hopkins v. Southern California Telephone Co.*, 275 U.S. 393, 403 (1928). In other words, a state tax statute must "accord to all *in the same class* equality of rights." *Walters v. St. Louis*, 347 U.S. 231, 237 (1954); *Southwestern Oil Co. v. State of Texas*, 217 U.S. 114, 121 (1910).

Alabama's oil and gas severance tax scheme has long imposed "annual privilege taxes upon every person engaging or continuing to engage within the state of Alabama in the business of producing or severing oil or gas . . . for sale, transport, storage, profit or for use." Ala. Code §40-20-2(a) (1975). The tax is imposed on a statutorily defined class of taxpayers, namely "producers." Royalty interest owners were included within the statute's definition of "producers", just as were working interest owners. A producer was defined by Alabama Code Section 40-20-1(8) (1975) as follows:

> PRODUCER. Any person engaging or continuing in the business of oil or gas production, which, for the purpose of this article, includes the owning, controlling, managing or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas by taking it from the soil or waters, or from beneath the soil or waters, of the state of Alabama, *and further includes receiving money or other valuable consideration as royalty or rental for oil*

> *or gas produced* or because of oil or gas produced, whether produced by him or by some other person on his behalf, either by lease, contract or otherwise, and whether the royalty consists of a portion of the oil or gas produced being run to his account or a payment in money or other valuable consideration. (Emphasis added).

Act 708, like its predecessor, Act 434, amended the Alabama oil and gas severance tax statutes,[3] but did not change this definition of "producer," nor did it change the language of Section 40-20-2(a) quoted above which levied the tax on "producing or severing oil or gas." Consequently, working interest owners and royalty interest owners are members of the same class of taxpayers subject to the severance tax, both before and after the amendment promulgated by Act 708. As previously stated, the Equal Protection Clause requires that all members of this single class be accorded equal tax treatment.

On several prior occasions this Court has noted that it is proper to consider working interest owners and royalty interest owners as a single class for purposes of imposing a severance tax because both are in a "mining venture" and "have a direct and beneficial interest in the oil being produced." *Barwise v. Sheppard*, 299 U.S. 33, 37 (1936); *see also Lake Superior Consolidated Iron Mines v. Lord*, 271 U.S. 577 (1926).

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[3] The several statutes pertaining to the severance tax in question are contained in Ala. Code §§40-20-1 to 40-20-13 (1975).

In *Barwise*, Texas amended its severance tax statute to tax "all interested parties including royalty interests." 299 U.S. at 35. Royalty interest owners then challenged the amendment arguing that they were not actively engaged in the production of oil and that they could not be included within the class of persons subject to a tax on the "occupation" of producing oil. The Court rejected this contention, stating that working interest owners and royalty interest owners "are, in a very practical sense, committed to and engaged in a common venture for their mutual benefit." *Id.* at 39. Therefore, under the Texas statute, royalty interest owners were validly included in the same class of taxpayers as working interest owners. The Court concluded:

> Without question the State has power to lay an excise on the production of oil. Here it is laid, admissibly we think, on those having a direct and beneficial interest in the oil produced and is apportioned between them according to their interests. The apportionment is reasonable, not arbitrary; and is as reasonable to the lessors as to the lessee.

Id. at 39.

The Court's decision in *Barwise* expanded on its prior holding in *Oliver Iron Mining Co. v. Lord*, 262 U.S. 172 (1923), that working interest owners were validly subject to an occupational tax on mining. Although the statute then in question excluded the royalty interest from a tax on mining production, the validity of that exclusion under the Fourteenth Amendment was not in question. In a later case, this Court did face the issue of whether royalty interests were properly taxed along with the interests of active mine

producers and answered the question in the affirmative. *Lake Superior Consolidated Iron Mines v. Lord*, 271 U.S. 577 (1926). In that case, as well as in *Barwise*, this Court recognized that royalty owners were properly included in the class of producers subject to mining occupation taxes.

Any classification made by a state taxing statute "must be reasonable,[4/] not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The royalty owner exemption causes Act 708 to fail this test.

As previously noted, the statutory framework that existed immediately before and immediately after the enactment of Act 708 (as well as its predecessor, Act 434) shows that the Act constituted an arbitrary departure from the other provisions of the Alabama oil and gas severance tax statute which did not have a fair and substantial relation to the object of the legislation. The tax imposed by Act 708 by its own terms is an annual privilege tax "levied . . . upon every person engaging or continuing to engage . . . in the business of producing or severing oil or gas." Ala. Acts No. 708, Sec. 1(a). The definition of "producer" both before and

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[4/] **The effect of the royalty owner exemption, when considered in connection with the other severance tax provisions, is to require the working interest owner to pay the tax not only on the basis of its own share of production but upon all other production as well, namely the royalty interest owned by the exempt royalty owner. Such a result is manifestly unreasonable.**

after the enactment of Act 708 included working interest owners within the class of persons engaged in such occupation and subject to the tax. Additionally, the statute expressly stated that the tax was to be based upon the entire production, including the royalty owner's interest and all producers were to be taxed "in the proportion of their ownership." Ala. Code §40-20-3(a) (1975). These mandates likewise remained unchanged after the enactment of Act 708. Such provisions established the classification of producer and revealed the object of the legislation to be an equal burden of taxation on all members of the class that were to benefit from engaging in the privilege taxed. Act 708 departed dramatically from both concepts by exempting royalty owners from paying the two percent increase. As a consequence of this exemption, members of the same class were taxed according to different rates, thereby arbitrarily and unreasonably imposing a substantially higher tax on working interest owners than on royalty interest owners. Rather than treat different classes in a different way, as is permitted under the Fourteenth Amendment, Act 708 arbitrarily subjected members of the same statutorily defined "producer" class to differing tax burdens.

Furthermore, Act 708 cannot constitutionally be interpreted as creating a sub-classification of producers. The severance tax is imposed on all producers engaged in the occupation of producing oil and gas. The Alabama legislature chose to levy the tax on all production, including the royalty owner's interest. Under the rationale of *Barwise, supra*, royalty interest owners and working interest owners are "engaged in a common venture for their mutual benefit." 299 U.S. at 39. They are both engaged in the occupation of producing oil and gas and should bear the burden of any tax on production in proportion to their ownership interest in

that production. There is absolutely no conceivable reason to distinguish one producer from another for severance tax purposes.[5] "The Equal Protection Clause . . . den[ies] to States the power to legislate that different treatment be accorded to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." *Reed v. Reed*, 404 U.S. 71, 75-76 (1971).

Although state legislatures have been granted wide latitude to create classifications in their tax legislation, the latitude granted is not so wide as to encompass such blatant and palpably unjustified discrimination as that created by either Act 708 or its predecessor, Act 434. The discriminatory features of these acts deviate too far from the severance tax statutes approved by this Court in the past, which treat all interest holders engaged in the occupation of mining equally and impartially. In *Barwise*, the tax was levied and apportioned between the interest owners according to their ownership. In that decision, the Court stated: "[t]he apportionment is reasonable, not arbitrary; and is as reasonable to the lessors

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[5] The Alabama Supreme Court attempted to distinguish working interest owners from royalty interest owners by noting that "oil companies enjoy the privilege of severing the oil and gas, whereas the royalty owners are not, as such, active participants in the process of severing." 426 So.2d 814, 817 (Ala. 1982), Appendix A at 8a. Such a conclusion is, however, in error. Only operators sever oil and gas from the ground and many working interest owners are not operators. Even Act 708 implicitedly recognized that royalty interest owners and working interest owners are members of the same class since it levied the tax "upon the basis of the entire production in this state, including what is known as the royalty interest." 1979 Ala. Acts No. 708, Sec. 1(b).

as to the lessee." 299 U.S. at 39. Act 708 is arbitrary and unreasonable not only because it treated members of the same class unequally by exempting royalty interest owners from the two percent tax increase but also because it required working interest owners to bear the tax on the royalty interest owner's share of production.

II. THE ROYALTY OWNER EXEMPTION FORCES WORKING INTEREST OWNERS TO BEAR THE BURDEN OF THE TAX INCREASE IMPOSED ON ROYALTY INTERESTS, AND ARBITRARILY AND UNREASONABLY DISTRIBUTES THIS ADDITIONAL TAX BURDEN UNEQUALLY AMONG WORKING INTEREST OWNERS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

When the Alabama Legislature enacted Act 708, it violated the constitutional requirement that a tax statute must operate alike on all persons and property similarly situated or circumstanced not only by differentiating between working interest owners and royalty interest owners but also by imposing a differing tax treatment among the working interest owners themselves. *See Walters v. St. Louis*, 347 U.S. 231 (1954); *Southwestern Oil Co. v. State of Texas*, 217 U.S. 114 (1910).

There can be no doubt that "producers" are all members of one class for purposes of the Alabama severance tax. The severance tax is levied on the "business of producing or severing oil or gas" within Alabama. 1979 Ala. Acts No. 708, Sec. 1. A producer is defined as "[a]ny person engaging or

continuing in the business of oil or gas production." Ala. Code §40-20-1(8) (1975). Thus, the Alabama severance tax is levied on "producers," a statutorily defined class of taxpayers.

Even absent a statutory definition, producers are properly considered one class for purposes of a state severance tax on the occupation of mining and producing minerals from the ground. *Oliver Iron Mining Co. v. Lord*, 262 U.S. 172 (1923). In that case, lessees of mineral lands who were actively engaged in mining and producing iron ore from the leasehold were subject to a Minnesota occupation tax on mining. The mining companies complained on various grounds that the classification and taxation of ore producers was invalid under the Equal Protection Clause of the Fourteenth Amendment. This Court held that the tax was an occupational tax, laid "on the business of mining the ore, which consists in severing it from its natural bed and bringing it to the surface where it can become an article of commerce." *Id.* at 176-77. The tax was held valid when levied on those who were engaged in that business and laid on them solely because they were so engaged. *Id.* at 177. Because the Alabama severance tax is an occupation tax imposed on those granted the privilege of engaging in the occupation of producing oil and gas, those producers subject to the tax must be considered as one class.

When Act 708 (and its predecessor, Act No. 434) increased the Alabama severance tax, the burden of that increase was allocated only to the working interest owners. The tax imposed on the royalty interest owner's share of production was made the liability of the working interest owner because the royalty owner exemption exempted the royalty owner while the working interest owner remained liable for the

entire tax, including the tax increase attributable to the royalty owner's interest. Thus, working interest owners pay the two percent tax increase on the royalty interest share of production in addition to the tax on their share of production.

The two percent tax increase is arbitrarily distributed to the working interest owners depending on the size of the particular royalty interest in each respective area of production. Following is an example which illustrates the arbitrary distribution of the tax burden under Act 708:

> Example: Assume that WI_1 (working interest owner) is a producer of oil and gas in Alabama and is similarly situated in all material respects to WI_2, also a working interest owner in Alabama. R_1 is a 12.5% royalty interest owner in a lease in Alabama with WI_1. R_2 has a lease in Alabama with WI_2 calling for a 54% royalty. Assume that WI_1 and WI_2 each produces $10,000 of oil and gas during the year.

		Tax Burden		
	Share of Production	4% Tax	2% Increase	Total Tax
WI_1	$ 8,750	$350	$200	$550
R_1	$ 1,250	$ 50	$ 0	$ 50
Totals	$10,000	$400	$200	$600

WI_2	$ 4,600	$184	$200	$384
R_2	$ 5,400	$216	$ 0	$216
Totals	$10,000	$400	$200	$600

Under Act 708, as under Act 434, the four percent tax burden was distributed in proportion to each interest owner's share of production. The two percent tax burden is based on the total production of both the working interest owner and the royalty interest owner but is imposed solely on the working interest owner. In this example, WI_2 receives $4,600 under the lease and WI_1 receives $8,750, yet both WI_1 and WI_2 pay the same ($200) two percent tax burden. Thus, WI_2's effective tax rate is far greater than WI_1's simply because of the different royalty percentage under the particular lease as the following table indicates:

	Effective Tax Rate		
	4% Tax	2% Increase	Total Tax
WI_1	4%	2.29%	6.29%
WI_2	4%	4.35%	8.35%
R_1	4%	—	4.00%
R_2	4%	—	4.00%

The inequality and arbitrariness of Act 708 on the working interest owner class of taxpayers is apparent from the above

example. WI_2 is similarly situated in all material respects to WI_1 and both are members of the same working interest owner class. Why should WI_2 have to bear an 8.35% severance tax burden, while WI_1 only bears 6.29%? There are no rational reasons for this disparate treatment. The size of the royalty interest negotiated between the lessor and lessee under a particular lease has no logical connection with the tax rate imposed. No state interest is served by imposing a greater tax burden on those producers holding leases with larger royalty interests. Therefore, there can be no argument that producers may be "sub-classified" to permit such disparate tax treatment. There is clearly no basis in fact or circumstance which would justify this arbitrary and unequal treatment of working interest owners. Consequently, Act 708 does not operate alike on all persons and property similarly situated or circumstanced that belong to the same class and, therefore, is in violation of the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

For the reasons stated herein, and because this Court is presently considering matters of a similar nature in consolidated cases numbers 81-1020 and 81-1268, the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

C. B. Arendall, Jr.

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1982

EXXON CORPORATION AND THE LOUISIANA LAND AND EXPLORATION COMPANY,

Appellants,

v.

RALPH EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.

Appellees.

On Appeal from the Supreme Court of the State of Alabama

PROOF OF SERVICE

I, LOUIS E. BRASWELL, one of the attorneys for Exxon Corporation and The Louisiana Land and Exploration Company, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of May, 1983, I served copies of the foregoing Jurisdictional Statement on all parties required to be served as follows:

1. On Appellee herein Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States post office, with first class postage prepaid, addressed to John J. Breckenridge, his counsel of record at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of record, as follows:

TO: Rae M. Crowe, Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company, Placid Refining Company, Inc., and Union Oil Company of California,
1101 Merchants National Bank Building
Post Office Box 290
Mobile, Alabama 36601;

TO: Euel A. Screws, Jr., Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company, Placid Refining Company, Inc., and Union Oil Company of California,
Post Office Box 347
Montgomery, Alabama 36101;

TO: James R. Seale, Esq., Attorney for Warrior Drilling and Engineering Company, Inc.,
Post Office Box 2069
Montgomery, Alabama 36103.

Louis E. Braswell

LOUIS E. BRASWELL
Attorney for Exxon Corporation
and The Louisiana Land and
Exploration Company

APPENDIX A

[Opinion of the Supreme Court of Alabama
entered December 10, 1982]

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1982-83

Union Oil Company of California, et al.

81-169 v.

Ralph P. Eagerton, Jr., Commissioner of
Revenue of the State of Alabama

Exxon Corporation, et al.

81-207, 81-503,
81-643, 81-966, v.
82-32 & 82-165

Ralph P. Eagerton, Jr., Commissioner of
Revenue of the State of Alabama

Getty Oil Company, a Corporation, et al.

81-538 v.

Ralph P. Eagerton, Jr., Commissioner of
Revenue of the State of Alabama

Phillips Petroleum Company, Getty Oil Company,
Placid Refining Company, Inc.
and
Union Oil Company of California

81-972
82-33 v.

Ralph P. Eagerton, Jr., Commissioner of
Revenue of the State of Alabama

The Louisiana Land and Exploration Company, et al.

81-742 v.

Ralph P. Eagerton, Jr., Commissioner of
Revenue of the State of Alabama

ALMON, JUSTICE.

This appeal comes after remand of these consolidated cases in *Eagerton v. Exchange Oil and Gas Corporation*, 404 So.2d 1 (Ala. 1981) (*Eagerton v. Exchange*). The trial court entered a judgment in favor of Eagerton, as Commissioner of Revenue, based upon a stipulation of the parties. We affirm.

Many of the issues that the oil company appellants raise herein are identical to, or are variations on, the issues decided in *Eagerton v. Exchange, supra*. The legislature amended the oil and gas severance tax subsequent to that decision, however, so this appeal presents a further question of statutory

interpretation. The oil companies assert that the legislature changed the purpose of the new act during passage and thus violated § 61 of the Alabama Constitution.

In 1979 the legislature passed Act No. 79-434 to increase the severance tax on oil and gas production in Alabama. A number of oil companies paid the higher tax under protest and filed suit for refunds. The circuit court held Act No. 79-434 unconstitutional and ordered the refunds. This Court reversed and remanded. *See Eagerton v. Exchange, supra.*

In the 1980 legislature, Representative Hines, who had introduced the bill which became Act No. 79-434, introduced a bill (H.B. 909) with the following title:

> "To repeal Section 40-20-2 and Section 40-20-8, Code of Alabama 1975, as amended by Act 434, Acts of Alabama 1979, and to reenact Section 40-20-2 and Section 40-20-8 as the same existed prior to enactment of Act 434, Acts of Alabama 1979, and to further provide for the rate of severance tax on the production of oil and gas on wells from 15,000 to 15,800 feet in the smackover formation that come into production after September 1, 1979, to provide further for distribution of the proceeds of the increased tax and to provide certain exemptions from the increased rate."

In addition to the provisions directly alluded to in the title, the proposed bill refunded the increased taxes collected under Act No. 79-434 and stated that prior interpretations (i.e., *Eagerton v. Exchange*) of Act No. 79-434 were "void."

This bill was amended during passage so that it substantially reenacted Act No. 79-434 rather than repealing it. Acts of Alabama 1980, Act No. 80-708. The oil companies argue that this constitutes a change in purpose of the bill and so violates § 61 of the Alabama Constitution.

We disagree. The act as passed has the following title:

> "To amend Section 40-20-2 of the Code of Alabama 1975, so as to further provide for the severance tax on the production of oil and gas."

Thus, the bill as introduced and as passed dealt with the severance tax on oil and gas production and with amending § 40-20-2. 1/

The established law of this state is that the "purpose" within the meaning of § 61 is the general purpose. *State Docks Comm'n v. State ex rel. Jones*, 227 Ala. 521, 150 So. 537 (1933). *Opinion of the Justices*, 383 So.2d 527 (Ala. 1980); *Opinion of the Justices*, 361 So.2d 536 (1978). The general purpose of both versions of the bill was amending § 40-20-2 and providing for the oil and gas tax. Section 61 was not violated.

More particularly, in the field of revenue legislation, this Court has held that the purpose is the raising of revenues, and as long as a substitute bill has that same purpose, it does not violate § 61.

1/ We quote only the titles because the bill and the acts are rather lengthy, and we think the above sufficiently sets out the substance of each.

". . . The bill was, therefore, essentially amendatory of the existing law, and it is not inapt to say that its purpose was to amend the existing law. . . .

". . . Upon its consideration by the house, it was found to be unsatisfactory to a majority of the members; and thereupon another bill was brought forward in its stead, and substituted for it by way of amendment of it. This substitute related to the same subject – the levy, the assessment and collection of taxes – the raising of revenue. It had the same general effect upon existing laws, i.e., the substitute operated the emendation of existing laws, as did the original."

Southern Railway Co. v. Mitchell, 139 Ala. 629, 641, 37 So. 85 (1904).

The Court in *Southern Railway Co.* addressed a general revenue statute, but in *Harris v. State ex rel. Williams*, 228 Ala. 100, 151 So. 858 (1933), held the same principles to apply to a bill "to amend the revenue laws in respect to specific taxes," *Id.*, 228 Ala. at 102.

"While the court was dealing with a general revenue bill, it shows that the proposal to amend the state's revenues is a single subject and that it has a single purpose, which purpose is not changed by a substitute different in many respects from the original bill. If the theory that a bill to raise revenue or to amend the revenue laws has but one subject and one purpose is

> sound, then the proposal to do so in one respect is not changed on its passage by the addition of an amendment of such laws in another respect, provided the title is not uncertain or misleading. So long as the original purpose of the bill is not changed it may be amended or a substitute enacted which will not take the status of a new bill."

Id., at 104 (citations omitted).

Of course, this analysis should not be taken to mean the legislature can take liberties with revenue bills and violate the spirit of § 61. Here, however, the bill never deviated from the purpose of amending the oil and gas severance tax. The legislature chose to re-enact the amendment wrought by Act No. 79-434 with minor changes rather than repealing that amendment and re-enacting the prior law. Curiously, if the oil companies were to prevail and have us find that Act No. 80-708 contravened the Constitution, § 40-20-2 would stand as amended by Act No. 79-434. The changes in Act No. 80-708 are favorable to the oil companies – for instance, Act No. 79-434's prohibition against passing the increase on to consumers was deleted from Act No. 80-708.

The oil companies further argue that the exemption of royalty owners from the increased tax violates the equal protection clause of the fourteenth amendment of the United States Constitution and § 35 of the Constitution of Alabama.

This Court rejected this argument in *Eagerton v. Exchange*, but the oil companies introduced affidavits into the record below to the effect that the lighter tax burden on royalty

owners would not encourage oil and gas exploration and production. This testimony sought to contradict the statement in *Eagerton v. Exchange* that "it is conceivable that the exclusion of royalty owners from this increase in tax could encourage the development of new oil and gas wells." *Id.*, 404 So.2d at 5.

This issue is res judicata because it was litigated and decided in the first trial and this Court decided the issue against the oil companies on the first appeal. The Court held Act No. 79-434 "valid in its entirety." *Id.*, 404 So.2d at 8.

We do point out that the affidavits do not undercut the constitutionality of the royalty owner exemptions. The justification mentioned in *Eagerton v. Exchange* was not proposed as the only conceivable reason for the higher tax on working interest owners. The Court in *Ray E. Loper Lumber Co. v. State*, 269 Ala. 425, 113 So.2d 686 (1959), upheld a timber severance tax which effectively imposed a higher tax on those who convert timber into lumber within the state than those who ship the timber out of the state still in the form of logs. The Court held the higher burden justifiable because:

> "A severer of timber who merely severs it from the soil and ships it out of the State unconverted into lumber, enjoys merely the privilege of severing. One who severs from the soil and then converts the timber into lumber in Alabama enjoys not only the privilege of severing but also the privilege of manufacturing in this State.
>
> "The difference in the two classes is based on the difference in the privileges enjoyed. He who

> manufactures in Alabama enjoys an additional or greater privilege. We do not think a classification, which requires a greater tax from the one who enjoys the greater privilege, is arbitrary or fanciful. Such a classification is based on a real and substantial difference. We do not undertake to set out other substantial reasons which justify the classification."

Id., 269 Ala. at 433. The greater tax was not invalid even though a sawmill privilege license tax was also required. *Id.*, at 430. Similarly, oil companies enjoy the privilege of severing the oil and gas, whereas the royalty owners are not, as such, active participants in the process of severing.

We note finally that the United States Supreme Court has recently addressed attacks on a state severance tax on Commerce Clause (U.S. Const. art. I, § 8, cl. 3) and Supremacy Clause (U.S. Const. art. VI, cl. 2) grounds and held the tax constitutional. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981). This case does not address the Equal Protection Clause of the Fourteenth Amendment, so the long-standing broad discretion given legislatures in classification for tax purposes, *Heisler v. Thomas Colliery Co.*, 260 U.S. 245 (1922), still stands.

For the foregoing reasons the circuit court properly granted judgment for Commissioner Eagerton. That judgment is therefore affirmed.

AFFIRMED.

All the Justices concur.

APPENDIX B

[Judgments entered by the Supreme Court of Alabama]

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

81-169

UNION OIL COMPANY OF
CALIFORNIA, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH P. EAGERTON, JR., ETC.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Union Oil Company of California, Exchange Oil & Gas, Getty Oil Company, Placid Oil Company and Phillips Petroleum Corporation, and Euel A. Screws, Jr. and James M. Edwards, sureties for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-207

EXXON CORPORATION, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH P. EAGERTON, JR., ETC.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation and The Louisiana Land and Exploration Company, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.

TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

81-503

EXXON CORPORATION, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH P. EAGERTON, JR., ETC.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation and The Louisiana Land and Exploration Company, and Louis E. Braswell, surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-538

GETTY OIL COMPANY, A CORPORATION, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH P. EAGERTON, JR., ETC.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Getty Oil Company, a corporation, Placid Oil Company, a corporation, Placid Refining Company, Inc., a corporation, Union Oil Company of California, a corporation, and Phillips Petroleum Company, a corporation, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.

TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

81-643

EXXON CORPORATION, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH EAGERTON, ETC.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, The Louisiana Land and Exploration Company, Getty Oil Company, Phillips Petroleum Company, Placid Oil Company, Placid Refining Company, Inc. and Union Oil Company of California , and Euel A. Screws, Jr. and James M. Edwards, sureties for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

81-742

THE LOUISIANA LAND AND EXPLORATION COMPANY, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH EAGERTON, ETC.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, The Louisiana Land and Exploration Company, Exxon Corporation, Placid Refining Company, Inc., Getty Oil Company, Union Oil Company of California and Phillips Petroleum, and Euel A. Screws, Jr., surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

81-966

EXXON CORPORATION, A CORPORATION, AND THE LOUISIANA LAND AND EXPLORATION COMPANY

VS. MONTGOMERY CIRCUIT COURT
No. CV82-896-TH and 895

RALPH EAGERTON, ETC.

This cause having been duly submitted to the Court, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, a corporation, and The Louisiana Land and Exploration Company, and Louis E. Braswell, surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

81-972

PHILLIPS PETROLEUM COMPANY, ET AL.

VS. MONTGOMERY CIRCUIT COURT

RALPH EAGERTON, ETC.

This cause having been duly submitted to the Court, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Phillips Petroleum Company, Getty Oil Company, Placid Refining Company, Inc., and Union Oil Company of California, and Euel A. Screws, Jr., surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

82-32

EXXON CORPORATION, ET AL.

VS. MONTGOMERY CIRCUIT COURT
No. CV82-1247 & 1248
RALPH EAGERTON, ETC.

This cause having been duly submitted to this Court. IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, a corporation, and The Louisiana Land and Exploration Company, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

82-33

PHILLIPS PETROLEUM COMPANY, ET AL.

VS. MONTGOMERY CIRCUIT COURT
No. CV 82-1296, 82-1298,
82-1299, 82-1300
RALPH EAGERTON, ETC.

This cause having been duly submitted to the Court, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Phillips Petroleum Company, Placid Refining Company, Inc., Getty Oil Company, and Union Oil Company of California, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

December 10, 1982
THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1982-83

82-165

EXXON CORPORATION AND THE
LOUISIANA LAND AND EXPLORATION
COMPANY

VS. MONTGOMERY CIRCUIT COURT
No. CV82-1559-TH
RALPH EAGERTON, ETC.

This cause having been duly submitted to this Court, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation and The Louisiana Land and Exploration Company, and Louis E. Braswell, surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION BY ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

APPENDIX C

[Denial of Application for Rehearing by the Supreme Court of Alabama]

Office of
Clerk of the Supreme Court
State of Alabama
Montgomery

February 11, 1983

Re: 81-169 and consolidated cases

Union Oil Company of California, et al.
Appellant

vs.

Ralph P. Eagerton, Jr., etc.
Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

_____Appeal docketed. Future correspondence should refer to the above number.

_____Court Reporter granted additional time to file reporter's transcript to and including

_____Clerk/Register granted additional time to file clerk's record/record on appeal to and including

_____Appell_____ granted 7 additional days to file briefs to and including

_____Appellant(s) granted 7 additional days to file briefs to and including

_____Record on Appeal filed

_____Appendix Filed

_____Submitted on Briefs

_____Petition for Writ of Certiorari denied. No opinion.

XXX Application for rehearing overruled. No opinion written on rehearing.

_____Permission to file amicus curiae briefs granted

_____

/s/Dorothy F. Norwood
Acting Clerk, Supreme Court of Alabama

2-11-83
wo

APPENDIX D

[Orders entered by the Circuit Court of Montgomery County, Alabama]

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

EXXON CORPORATION, ET AL.,
PLAINTIFFS.

V.

RALPH EAGERTON, ETC.
DEFENDANT.

CIVIL ACTION NOS.:	CV-80-1322-P
	CV-80-1330-P
CV-81-221-P	CV-80-1331-P
CV-81-297-P	CV-80-1332-P
CV-81-298-P	CV-80-1333-P
CV-81-299-P	CV-80-1360-P
CV-81-300-P	CV-80-1388-P
CV-81-301-P	CV-80-1432-P
CV-81-302-P	CV-80-1580-P
CV-81-543-P	CV-80-1641-P
CV-81-544-P	CV-80-1642-P
CV-81-593-P	CV-80-1643-P
CV-81-594-P	CV-80-1644-P
CV-81-595-P	CV-80-1645-P
CV-81-596-P	CV-80-1646-P
CV-81-597-P	CV-80-1780-P
CV-81-598-P	CV-80-1848-P
CV-81-856-P	CV-80-1849-P
CV-81-857-P	CV-81-034-P
CV-81-876-P	CV-81-035-P
CV-81-877-P	CV-81-036-P
CV-81-878-P	CV-81-037-P

CV-81-879-P	CV-81-038-P
CV-81-880-P	CV-81-039-P
CV-81-1149-P	CV-81-220-P
CV-81-1150-P	
CV-81-1172-P	
CV-81-1173-P	CV-81-1175-P
CV-81-1174-P	CV-81-1177-P

ORDER

These consolidated declaratory judgment actions are submitted to the Court for decision pursuant to the Stipulation of the parties and upon stipulated facts.

The Court has thoroughly considered the documents filed by the parties together with their briefs. These cases all involve the constitutionality of Act No. 708, Acts of Alabama 1980, Regular Session of the Alabama Legislature. This act is nearly identical to Act No. 434, Acts of Alabama 1979, Regular Session of the Alabama Legislature.

The Supreme Court of Alabama in *Eagerton v. Exchange Oil and Gas Corporation*, Supreme Court of Alabama, 79-823, July 10, 1981, specifically held Act No. 434, supra, to be "valid in its entirety." Upon the authority of *Eagerton*, this Court now determines Act No. 708 to be constitutional and valid in its entirety. The other and further relief requested by the Plaintiffs in each of the above consolidated cases be and the same is hereby DENIED.

Costs of these proceedings be and the same are hereby taxed against Plaintiffs for the collection of which execution may issue.

DONE this the 29th day of September, 1981.

/s/J. Phelps
Circuit Judge

IN THE FIFTEENTH JUDICIAL CIRCUIT OF ALABAMA

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

EXXON CORPORATION, A Corporation; LOUISIANA LAND & EXPLORATION CO., A Corporation; GETTY OIL COMPANY, A Corporation; PLACID OIL COMPANY, A Corporation; PLACID REFINING COMPANY, INC., A Corporation; UNION OIL COMPANY OF CALIFORNIA, A Corporation; and PHILLIPS PETROLEUM COMPANY, A Corporation;

Plaintiffs

v.

RALPH P. EAGERTON, JR., As Commissioner of Revenue of the State of Alabama

Defendant

IN EQUITY
CV81-1502-TH, CV81-1503-TH
CV81-1547-TH, CV81-1548-TH
CV81-1549-TH, CV81-1552-TH
CV81-1553-TH, CV82-74-TH,
CV82-75-TH, CV-82-76-TH,
CV-82-77-TH, CV-82-78-TH
CV-82-08-TH
CV-82-09-TH

FINAL JUDGMENT

The above-styled actions having previously been consolidated by Order of the Court, the above actions are presently

before the Court upon the Defendant Commissioner of Revenue's *Motion for Judgment on the Pleading*.

The Court has thoroughly considered the documents filed by the parties together with their briefs. These cases all involve the constitutionality of Act 80-708, Acts of Alabama, 1980 Regular Session. As the parties have stated in their pleadings, this Act is nearly identical to Act 79-434, Acts of Alabama, 1979 Regular Session.

The Supreme Court of Alabama in *Eagerton v. Exchange Oil & Gas Corporation, et al.*, Ala., 404 So.2d 1 (1981), specifically held Act 79-434, supra, to be "valid in its entirety." On September 29, 1981, the Circuit Court of Montgomery County, Alabama upheld and determined Act 80-708 to be "constitutional and valid in its entirety". Upon consideration of the previous decision of the Supreme Court of Alabama in *Eagerton v. Exchange Oil & Gas Corporation*, supra, and the decision of the Circuit Court of Montgomery County, Alabama involving the same parties to the present action, it is the decision of this Court that Act 80-708 is constitutional and valid in its entirety and the payments made by the Plaintiffs to the Defendant under protest which are the subject matter of the present consolidated actions are entirely lawful and are due and owing. The other and further relief requested by the Plaintiffs in each of the above consolidated actions are due to be and same is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by this Court that the costs of these proceedings be and the same are hereby taxed against the Plaintiffs for the collection of which execution may issue.

DONE AND ORDERED this the 25th day of February, 1982.

/s/H. R. Thomas
Circuit Judge

John Breckenridge
James Seale
Euel Screws
Louis Braswell
Ray Crowe

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

EXXON CORPORATION, a corporation,
THE LOUISIANA LAND AND
EXPLORATION COMPANY,
GETTY OIL COMPANY,
PHILLIPS PETROLEUM COMPANY,
PLACID OIL COMPANY,
PLACID REFINING COMPANY, INC.,
UNION OIL COMPANY OF CALIFORNIA,
Plaintiffs,

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,
Defendant.

CV-82-349-TH
CV-82-350-TH
CV-82-351-TH
CV-82-352-TH
CV-82-353-TH
CV-82-354-TH
CV-82-355-TH

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in

its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 31st day of March, 1982.

/s/H. Randall Thomas
H. RANDALL THOMAS
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

THE LOUISIANA LAND AND
EXPLORATION COMPANY,

Plaintiff,

v.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant.

CIVIL ACTION NO. 82-601-TH

EXXON CORPORATION, a corporation,

Plaintiff,

v.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant.

CIVIL ACTION NO. 82-602-TH

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 31st day of March, 1982.

/s/H. Randall Thomas
H. RANDALL THOMAS
CIRCUIT JUDGE

Louis E. Braswell
Richard A. Chopin
John Breckenridge
Euel Screws
James Seale
Charles Snyder

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

THE LOUISIANA LAND
AND EXPLORATION COMPANY,

Plaintiff

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant

Civil Action No. 82-601-TH

EXXON CORPORATION, a corporation,

Plaintiff

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant

Civil Action No. 82-602-TH

PLACID REFINING COMPANY, INC.,

Plaintiff

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant

Civil Action No. 82-634-TH

GETTY OIL COMPANY,

Plaintiff

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant

Civil Action No. 82-635-TH

UNION OIL COMPANY OF CALIFORNIA,

Plaintiff

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant

Civil Action No. 82-636-TH

PHILLIPS PETROLEUM COMPANY,

Plaintiff

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant

Civil Action No. 82-637-TH

ORDER

The previous Order entered in five of the above consolidated cases was erroneously dated and the same is hereby vacated and withdrawn, and the following is substituted therefor:

The above six consolidated cases come before this Court challenging the constitutionality of Act 80-708. The parties

to these cases were also the parties to those cases consolidated and decided within CV-81-1502-TH. By agreement of the parties, these six consolidated cases present identical issues as were presented in CV-81-1502-TH. It is therefore the finding of the Court that Act No. 80-708 is constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the Defendant in each of the above six consolidated cases and the costs are taxed against the Plaintiffs, which have been prepaid.

DONE this the 17th day of May, 1982.

/s/H. Randall Thomas
H. Randall Thomas
Circuit Judge

Louis E. Braswell
Richard A. Chopin
John Breckenridge
Euel A. Screws, Jr.
James Seale
Rae Crowe
Charles A. Snyder

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

EXXON CORPORATION,

Plaintiff,

THE LOUISIANA LAND AND
EXPLORATION COMPANY,

Plaintiff,

vs.

RALPH P. EAGERTON, JR., as Commissioner
of Revenue of the State of Alabama,

Defendant.

CIVIL ACTION NO. CV-82-895-TH
CIVIL ACTION NO. CV-82-896-TH

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 28th day of July, 1982.

/s/H. Randall Thomas

H. RANDALL THOMAS
CIRCUIT JUDGE

Louis Braswell
John Breckenridge

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

EXXON CORPORATION
THE LOUISIANA LAND AND
EXPLORATION CO.
PHILLIPS PETROLEUM COMPANY
PLACID REFINING COMPANY, INC.
GETTY OIL COMPANY
UNION OIL COMPANY OF CALIFORNIA
Plaintiffs,

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama
Defendant.

CIVIL ACTION NO. 82-1247-TH
CIVIL ACTION NO. 82-1248-TH
CIVIL ACTION NO. 82-1300-TH
CIVIL ACTION NO. 82-1298-TH
CIVIL ACTION NO. 82-1296-TH
CIVIL ACTION NO. 82-1299-TH

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV 81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 21st day of September, 1982.

/s/H. Randall Thomas
H. RANDALL THOMAS
CIRCUIT JUDGE

Louis E. Braswell
Rae Crowe
Euel Screws
John Breckenridge

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

EXXON CORPORATION, a corporation,
Plaintiff,

vs.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,
Defendant.

CIVIL ACTION NO. 82-1558-TH

THE LOUISIANA LAND AND
EXPLORATION COMPANY,

vs.

RALPH EAGERTON, Commissioner of
of Revenue of the State of Alabama,
Defendant.

CIVIL ACTION NO. 82-1559-TH

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant

and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 8th day of November, 1982.

/s/H. Randall Thomas
H. RANDALL THOMAS
CIRCUIT JUDGE

C. B. Arendall, Jr.
John Breckenridge

APPENDIX E

[Notice of Appeal]

IN THE SUPREME COURT OF ALABAMA

UNION OIL COMPANY OF CALIFORNIA, et al.,
Appellants,

vs.

RALPH E. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

SUPREME COURT NOS. 81-207, 81-503, 81-643, 81-742, 81-966, 82-32, 82-165 (and all cases consolidated with SUPREME COURT NO. 81-169)

[Filed in the Supreme Court of Alabama on May 2, 1983]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Exxon Corporation and The Louisiana Land and Exploration Company, Appellants in the above styled cause, hereby appeal to the Supreme Court of the United States from the decision and final order entered in this action on December 10, 1982, by the Supreme Court of Alabama affirming the judgments of the Circuit Court of Montgomery County, Alabama. (Appellants' timely application for rehearing was denied on February 11, 1983).

This appeal is taken pursuant to 28 U.S.C. §1257(2).

/s/Louis E. Braswell

LOUIS E. BRASWELL
Attorney for Exxon Corporation
and The Louisiana Land and
Exploration Company

OF COUNSEL:

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
POST OFFICE BOX 123
MOBILE, ALABAMA 36601

PROOF OF SERVICE

I, LOUIS E. BRASWELL, one of the attorneys for Exxon Corporation and The Louisiana Land and Exploration Company, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of May, 1983, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on all parties required to be served, as follows:

1. On Appellee herein Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States post office, with first class postage prepaid, addressed to John J. Breckenbridge, his counsel of record at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of record, as follows:

TO: Rae M. Crowe, Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company, Placid Refining Company, Inc., and Union Oil Company of California,
1101 Merchants National Bank Building
Post Office Box 290
Mobile, Alabama 36601;

TO: Euel A. Screws, Jr., Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company, Placid Refining Company, Inc., and Union Oil Company of California,
Post Office Box 347
Montgomery, Alabama 36101

TO: James R. Seale, Esq., Attorney for Warrior Drilling and Engineering Company, Inc.
Post Office Box 2069
Montgomery, Alabama 36130.

I further certify that on said date I delivered a copy of the foregoing Notice of Appeal to the Clerk of the Circuit Court of Montgomery County, Alabama, inasmuch as that court may be possessed of the record herein.

/s/Louis E. Braswell
Attorney for Exxon Corporation
and The Louisiana Land and
Exploration Company

OF COUNSEL:
HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
POST OFFICE BOX 123
MOBILE, ALABAMA 36601

APPENDIX F

[Alabama Act No. 708 (Acts 1980, p. 1438)]

ALABAMA LAW
(Regular Session, 1980)

Act. No. 80-708 H.909 – Hines

AN ACT

To amend Section 40-20-2 of the Code of Alabama 1975, so as to further provide for the severance tax on the production of oil and gas.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 40-20-2 of the Code of Alabama 1975 is hereby amended to read as follows:

"§ 40-20-2.

"(a) There is hereby levied, to be collected hereafter, as herein provided, annual privilege taxes upon every person engaging or continuing to engage within the state of Alabama in the business of producing or severing oil or gas, as defined herein, from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit or for use. The amount of such tax shall be measured at the rate of six percent of the gross value of said oil or gas at the point of production. All wells producing less than 40 barrels of oil per day shall be taxed at the rate of four percent of the gross value of said oil or gas at the point of production. All wells that come into production after September 1, 1979,

shall be taxed at the rate of four percent of the gross value of said oil or gas at the point of production for a period of 10 years after production begins. Ten years after production begins, such tax shall then be imposed at the rate of six percent on such wells that go into production after September 1, 1979; provided, that said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation.

"(b) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production, the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil or gas is severed from the soil or the waters, or from beneath the soil or the waters, and in its natural, unrefined or unmanufactured condition.

"(c) A county, city, town or municipality of the state of Alabama shall not establish, levy, impose or collect, as a condition of doing business or otherwise, any tax, fee, license or charge whatsoever, directly or indirectly, on or with respect to the production, treating, processing, ownership, sale, storage, purchase, marketing or transportation on any oil or gas produced in the state of Alabama and on which severance taxes have been paid to the state of Alabama, or upon the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas, or upon the ownership, operation or maintenance of plants, facilities, machinery, pipelines, gathering lines or any equipment whatsoever, which are, or may be, necessary or convenient to the production, treating, processing, ownership, storage, sale, purchase, marketing or transportation of such

oil or gas: provided, that nothing herein shall be construed to prohibit, limit or restrict a county, city, town or municipality from imposing and collecting ad valorem taxes on any property, real or personal, not otherwise now exempted by law; further, the limitation herein imposed upon counties, cities, towns and municipalities shall not apply to any county, city, town or municipality which does not receive a share of the severance tax under the provisions of this article.

"(d) Nothing contained herein shall be deemed to limit or to enlarge the authority of a county, city, town or municipality to levy taxes or licenses on oil refining facilities located therein or on the suppliers of services or goods not including oil or gas to those persons engaging in the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas. Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

"(e) In all cases of production of oil from unit operations as authorized and approved by the state oil and gas board of Alabama, for purposes of computing the per well production aforesaid, the aggregate production of oil from the entire unit shall be divided by the number of wells within the unit, including injection, disposal and other wells utilized in unit operations, and the quotient thereof shall be deemed and declared to be the number of barrels of oil produced from each well in such unit regardless of the actual amount of oil per day produced from the well, if any."

Section 2. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 28, 1980

Time: 4:00 P.M.

I hereby certify that the foregoing copy of an Act of the Legislature of Alabama has been compared with the enrolled Act and it is a true and correct copy thereof.

Given under my hand this 29th day of May, 1980.

JOHN W. PEMBERTON
Clerk of the House

APPENDIX G

[Stipulation of the Parties]

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

GETTY OIL COMPANY,

Plaintiff

vs.

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue,

Defendant

Case No. 80-1331-P
80-1641-P
81-036-P
81-301-P
81-598-P
81-880-P

EXCHANGE OIL AND GAS,

Plaintiff

vs.

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue,

Defendant

Case No. 80-1330-P
80-1646-P
81-035-P
81-297-P
81-597-P

PLACID REFINING CO.,

Plaintiff

vs.

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue,

Defendant

Case No. 80-1360-P
80-1645-P
81-038-P
81-299-P
81-596-P
81-876-P
81-1175-P

PHILLIPS PETROLEUM COMPANY,

Plaintiff

vs.

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue,

Defendant

Case No. 80-1388-P
80-1643-P
81-039-P
81-300-P
81-595-P
81-878-P
81-1177-P

PLACID OIL COMPANY,

Plaintiff

vs.

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue,

Defendant

Case No. 80-1333-P
80-1644-P
81-037-P
81-298-P
81-594-P
81-879-P
81-1172-P

UNION OIL COMPANY,

Plaintiff

vs.

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue,

Defendant

Case No. 80-1332-P
80-1642-P
81-034-P
81-302-P
81-593-P
81-877-P
81-1174-P

EXXON CORPORATION, a corporation,

Plaintiff,

vs.

RALPH EAGERTON,
Commissioner of Revenue of the State of Alabama,

Defendant.

CIVIL ACTION NO. CV-80-1322
CV-80-1580
CV-80-1848
CV-81-220
CV-81-543
CV-81-857
CV-81-1149
and consolidated cases

THE LOUISIANA LAND AND
EXPLORATION COMPANY,

Plaintiff,

vs.

RALPH EAGERTON,
Commissioner of Revenue of the State of Alabama,

Defendant.

CIVIL ACTION NO. CV-80-1432
CV-80-1780
CV-80-1849
CV-81-221
CV-81-544
CV-81-856
CV-81-1150
and consolidated cases

STIPULATION OF PARTIES

Defendant stipulates that each of the Plaintiffs timely and properly (a) paid the taxes, (b) protested the payment of the taxes, and (c) sued for refund of the taxes. Defendant further stipulates that, if the Court's decision on the merits should be in favor of Plaintiffs, Defendant will stipulate as to the amounts of the taxes which were paid.

The Plaintiffs stipulate that their evidence at the trial of these cases would be the following:

(i) The original bill of the legislation which became Act 80-708 (attached hereto as Exhibit A).

(ii) The affidavit of Philip E. LaMoreaux (Exhibit B).

(iii) The affidavit of W. F. Bolding (Exhibit C).

(iv) The analysis of the aforementioned original bill by Department of Revenue (Exhibit D).

(v) Two amendments suggested to Act 708 by Department of Revenue (Exhibit E).

(vi) Transmittal sheet from Motor Fuels Division to Secretary of Department of Revenue (Exhibit F).

(vii) Transcript of proceedings in the House of Representatives of the legislation which became Act 708 (Exhibit G).

(viii) Transcript of proceedings in the Senate of the legislation which became Act 708 (Exhibit H).

(ix) Defendant's answers to interrogatories filed by Getty Oil, et al. (Exhibit I).

(x) Fiscal note of Senate Finance and Taxation Committee (Exhibit J).

The Defendant agrees that the affiants would testify at the trial as they have testified in their affidavits, and the Defendant makes no objection to the admission of such testimony

on the ground of it being in affidavit form. Defendant does object to the testimony of affiants on the grounds of competency, relevancy and materiality (but such grounds are not predicated on the testimony being in affidavit form as opposed to in person testimony). Plaintiffs do not agree to the validity of these objections.

Defendant would not offer any further evidence if the case were tried.

As heretofore stipulated, the cases are now submitted to the Court for decision without the necessity for actual trial.

/s/Louis E. Braswell
Louis E. Braswell
Attorney for Plaintiffs
Exxon Corporation and
The Louisiana Land and
Exploration Company

/s/Rae M. Crowe
Rae M. Crowe

/s/Euel A. Screws, Jr.
Euel A. Screws, Jr.

Attorneys for Plaintiffs
Getty Oil Company,
Exchange Oil and Gas,
Placid Refining Co.,
Phillips Petroleum Company,
Placid Oil Company, and
Union Oil Company

/s/John Breckenridge
John Breckenridge
Attorney for Defendant
Ralph P. Eagerton, Jr., as
Commissioner of Revenue of
the State of Alabama

APPENDIX H

[Affidavit of Philip E. LaMoreaux]

AFFIDAVIT
OF PHILIP E. LAMOREAUX

I am Philip E. LaMoreaux, and my address is 1312 Indian Hills, Tuscaloosa, Alabama. I am a consulting geologist working in the field of oil, gas and minerals, as well as certain other fields. I was Alabama State Geologist and Alabama State Oil and Gas Supervisor from 1961 until 1976. I was then, and I still am, Professor of Geology at the University of Alabama.

I have personal knowledge of the matters stated herein.

I am familiar with the various contractual arrangements made for the production of oil and gas in Alabama by the parties owning the various interests in the oil and gas to be produced. One such arrangement is the oil and gas lease under which the lessor becomes entitled to "royalty" in the event of production. Actually there are many variations of the oil and gas lease depending upon the particular provisions which are used in the particular lease. The lessor or royalty owner, like the lessee, is one of the parties to a common venture for the mutual benefit of all of the parties interested in producing the oil and gas. Traditionally the lessor or royalty owner has received compensation and monies in various forms; these are matters which vary from lease to lease according to the particular terms negotiated between the parties. The various forms of monies and remuneration paid to lessors/royalty owners include the following: bonus payments made in consideration of the lessor's execution of the lease; delay rentals paid during the time before actual production occurs; and royalty paid after

production has occurred. Royalty can be in the form of production in kind or money derived from the sale of certain quantity of production; sometimes under a particular lease one party or the other has the right to designate how the royalty shall be taken. The quantity of royalty is subject to negotiation, and various leases reflect varying percentages of royalty. I am familiar with royalties which range as low as 6.25% to as high as 50%. There are also various types of royalties such as the overriding royalty which, according to a general understanding, is a royalty interest carved out of the lessee's working interest.

As has been stated, the royalty owner is one of the parties engaged in the common venture of producing oil and gas for the mutual benefit of all of the parties. By negotiation and by the various negotiated contractual provisions, the parties have dealt with their economic entitlements and with their respective obligations and rights. The fact that these matters are subject to negotiation and are subject to variation from lease to lease underscores the fact that the lessor/royalty owner is a member of the class of persons engaged in the production of oil and gas. Apparently for the reasons which have been mentioned, the Code of Alabama at § 40-20-1(8) defines "producer" as including a royalty owner as well as a working interest owner.

Because royalty owners are a part of the class of persons engaged in the common venture of producing oil and gas for the mutual benefit of all, there is no valid reason why the Alabama Legislature in Act 708 exempted royalty owners from the tax increase imposed by the act. Moreover, there is an affirmative reason why royalty owners, even more so than working interest owners, should not pay any less tax.

The working interest owner decides whether to start production; the working interest owner bears the costs of production whereas the royalty owner takes the royalty free from such costs. If the tax burden falls lighter upon the royalty owner and heavier upon the working interest owner, then the tax has the effect of discouraging, and certainly not encouraging, oil and gas exploration and production.

I am also familiar with the production of oil and gas from various geological formations and from various depths in Alabama, including production from the Smackover formation from the depth of 15,000 to 15,800 feet. Additionally, I am familiar with the geographic area in southwest Alabama which is underlain by the Smackover formation, and where production from the Smackover formation from the depth of 15,000 to 15,800 feet is occurring and can be expected to occur. Likewise, I am familiar with oil and gas production from other parts of the state.

With respect to the special treatment accorded by Act 708 to production from the Smackover formation from the depth of 15,000 to 15,800 feet, there is no valid reason for treating differently the production from this formation and this depth or the production from the geographic area where this production occurs. Nor is there any valid reason to encourage oil and gas production in other parts of the state and in other formations. Similarly, there is no valid reason to discourage oil and gas production in this part of the state or in this particular formation at this particular depth.

In support of the conclusions expressed in the preceding sentence, the Court should know that the Smackover formation exists at various depths some of which are shallower and some of which are deeper than the depth of 15,000 to

15,800 feet. There is no particular difference between production from the Smackover formation at the depth of 15,000 to 15,800 feet on the one hand and production from shallower and deeper depths in the Smackover formation. Also, in light of the various production wells which have been drilled in southwest Alabama where the Smackover formation exists at varying depths, there is no valid reason to discourage or to encourage oil and gas production in any particular area rather than in any other particular area. Until recently the only production in Alabama from the Smackover formation at the depth of 15,000 to 15,800 feet occurred in Escambia County, although it is significant to note that Escambia County also has other production. Escambia County has non-Smackover production (from the Norphlet formation which is a separate formation) which comes from a depth of 15,000 to 15,800 feet. Escambia County also has production from depths other than 15,000 to 15,800 feet. In October of 1980, production was obtained in Baldwin County from the Smackover formation at a depth between 15,000 and 15,800 feet. Additionally, it is possible that other counties could have Smackover production from the depth of 15,000 to 15,800 feet. Considering these facts and based upon my knowledge in general, there would be no valid reason to discourage production from the Smackover formation from 15,000 to 15,800 feet, either in Escambia County or Baldwin County or one of the other counties.

/s/Philip E. LaMoreaux
Philip E. LaMoreaux

Subscribed and sworn to before me on this 18th day of September, 1981.

/s/Judy G. Taylor
Notary Public

My Commission Expires March 6, 1984

APPENDIX I

[Parent Companies, Subsidiaries and Affiliates of Appellants]

Pursuant to Rule 28.1 of the Rules of the Supreme Court, the Appellants herein provide the following lists naming their parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates:

Exxon Corporation

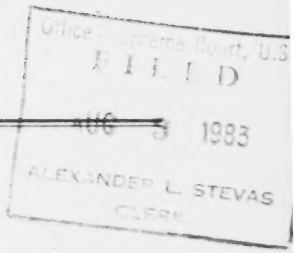
Exxon Corporation lists the following subsidiaries and affiliates whose stock or debt securities are publicly traded in the United States or Canada: Exxon Pipeline Company; Imperial Oil Limited; Reliance Electric Company.

The Louisiana Land and Exploration Company

The Louisiana Land and Exploration Company lists the following subsidiaries and affiliates: Bull Mountain Coal Company; Candex Development, Ltd.; CLAM Petroleum Company; CL&E Corporation; Iberian Petroleum Company of Angola, Ltd.; Industrial Utilities Service, Inc.; Jacintoport Corporation; Kalua Koi Corporation; LL&E Australia, Inc.; LL&E Canada, Ltd.; LL&E Coal, Inc.; LL&E Colombia, Inc.; LL&E Dubai, Inc.; LL&E Egypt, Inc.; LL&E Espana, Inc.; LL&E Ethiopia, Inc.; LL&E (Europe, Africa, Middle East) Inc.; LL&E Ghana, Inc.; LL&E Honduras, Inc,; LL&E, Inc.; LL&E Indonesia, Inc.; LL&E International, Inc.; LL&E Kenya, Inc.; LL&E Mining, Inc.; LL&E (Netherlands) Inc.; LL&E Netherlands Petroleum Company; LL&E Peru, Inc.; LL&E Petroleum Resources International, Inc.; LL&E Pipeline Corporation; LL&E Suez, Inc.; LL&E Tunisia, Inc.; LL&E (U.K.) Inc.; Louisiana Land Offshore Exploration Company, Inc.; Molokai Public Utilities, Inc.; Mosco,

Inc.: Natural Resources, Inc. of LL&E; South Louisiana Land Company, Ltd.; Sun Fire Coal Company; Swamplands, Inc.; Warrior River Coal Company; Westport Utilities System Company; CR Exploration Company; Copper Range Company; Unlimited Development, Inc.

No. 82-1821



IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EXXON CORPORATION
AND
THE LOUISIANA LAND AND EXPLORATION COMPANY,

Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION TO DISMISS APPEAL

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COUNSEL FOR APPELLEE

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No. 82-1821

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

EXXON CORPORATION AND THE LOUISIANA LAND AND EXPLORATION COMPANY,
Appellants,

versus

RALPH P. EAGERTON, JR., as COMMISSIONER OF REVENUE OF THE STATE OF ALABAMA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

May it please the Court:

The Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, hereby moves pursuant to Rule 16 of the Rules of the United States Supreme Court that the appeal in this present cause as filed by the Appellants Exxon Corporation and the Louisiana Land and Exploration Company be dismissed.

I. Grounds for Motion to Dismiss Appeal

Appellee Ralph P. Eagerton, Jr.'s Motion to Dismiss is based upon the following grounds:

A. COLLATERAL ESTOPPEL

In the case of *Allen v. McCurry*, 449 U.S. 90 at 94, 101 S.Ct. 411 at 414, 66 L.Ed. 2d 308 (1980) this Court held:

> The federal courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel ... Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first cause. (Citation omitted). As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. (Citation omitted).
>
> In recent years, this Court has reaffirmed the benefits of collateral estoppel in particular, finding the policies underlying it to apply in contexts not formerly recognized at common law. Thus, the Court has eliminated the requirement of mutuality in applying collateral estoppel to bar relitigation of issues decided earlier in federal-court suits, (Citation omitted), and has allowed a litigant who is not a party to a federal case to use collateral estoppel "offensively" in a new federal suit against the party who lost on the decided issue in the first case, (Citation omitted).

At page 2 of Appellants Exxon Corporation's and the Louisiana Land and Exploration Company's brief, under the heading *Statement of the Case*, Appellants Exxon and Louisiana Land have made the following statement:

> The challenged statute was enacted as Act 708 by the 1980 Regular Session of the Alabama Legislature and was in effect from May 28, 1980, until February 1, 1983. *It is, in essence, the successor statute to an act passed by the 1979 Legislature. This act, Act 434, was challenged in part, by these Appellants on the identical constitutional grounds raised herein in an appeal which is presently under consideration by this Court in consolidated cases Nos. 81-1010 and 81-1268.*
> (Emphasis supplied).

Appellants Exxon and Louisiana Land have therefore conceded that their present appeal before this Honorable Court is "on the identical constitutional grounds (as those) raised ... in consolidated cases Nos. 81-1020 and 81-1268."

In fact, the decision which Appellants Exxon and Louisiana Land are seeking to appeal to this Honorable Court specifically states: "Many of the issues that the oil company Appellants raise herein are identical to, or are variations on, the issues decided in *Eagerton v. Exchange, supra.*" (Opinion of the Supreme Court of Alabama entered December 10, 1982, Appendix A, Appellants' Brief, page 2a).

The Appellee Commissioner of Revenue submits that both questions No 1 and 2 in the "Questions Presented for Review" portion of the present appeal are identical to

questions No. 3 and 4 presented in case No. 81-1020 decided June 8, 1983, entitled *Exxon Corporation v. Eagerton*, 51 U.S.L.W. 4700. In addition, the Commissioner asserts that pages 6 through 17 of the present appeal are virtually identical to pages 21 through 31 of the appeal advanced by the Appellants in case No. 81-1020.

In the present appeal, Appellants Exxon and Louisiana Land are alleging that Act No. 708, *Acts of Alabama*, Regular Session 1980 violates the Equal Protection Clause of the Fourteenth Amendment of the *United States Constitution*. In *Exxon Corporation v. Eagerton, supra*, this Honorable Court in determining the constitutionality of a statute that the present Appellants have conceded is "virtually identical" to the present statute being appealed, stated:

> "Finally, we reject Appellants' equal protection challenge to the pass-through prohibition and the royalty-owner exemption. Because neither of the challenged provisions adversely affects a fundamental interest, (Citations omitted), or contains a classification based upon a suspect criterion, (Citations omitted), they need only be tested under the lenient standard of rationality that this Court has traditionally applied in considering equal protection challenges to regulation of economic and commercial matters. (Citations omitted).
>
> Under that standard a statute will be sustained if the legislature could have reasonably concluded that the challenged classification would promote a legitimate State purpose. (Citations omitted).

> We conclude that the measures at issue here pass muster under this standard. The pass-through prohibition plainly bore a rational relationship to the State's legitimate purpose of protecting consumers from excessive prices. Similarly, we think the Alabama Legislature could have reasonably determined that the royalty-owner exemption would encourage investment in oil or gas production. Our conclusion with respect to the royalty-owner exemption is reinforced by the fact that the provision is solely a tax measure. As we recently stated in *Regan v. Taxation with Representation of Washington*, ___ U.S. ___, ___ (1983), 'Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes.' (Citations omitted.)" 51 U.S.L.W. 4700, 4705 (U.S. June 8, 1983).

From the above-quoted portion of *Exxon Corporation v. Eagerton, supra*, it is clear that the questions raised by the Appellants in the present appeal have recently been fully addressed and answered by the Supreme Court of the United States. Therefore, the Commissioner of Revenue of the State of Alabama submits that the Appellants are collaterally estopped from re-raising and re-litigating the questions they have raised by this present appeal. In *Montana v. U.S.*, 440 U.S. 147 at 153, 99 S.Ct. 970 at 973, 59 L.Ed. 2d 210 (1979) this Honorable Court recognized:

> A fundamental precept of common law adjudication, embodied in the related doctrines of collateral estoppel and res judicata is that a "right, question or fact distinctly put in issue and directly deter-

> mined by a court of competent jurisdiction ... cannot be disputed in a subsequent suit between the same parties or their privies ..." (Citation omitted). Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. (Citations omitted). Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. (Citations omitted). Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. (Citations omitted). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.

In *Montana v. U.S.*, *supra*, this Court adopted a 3-prong test to determine the applicability of the doctrine of collateral estoppel:

> To determine the appropriate application of collateral estoppel in the instant case necessitates three further inquiries: First, whether the issues presented by this litigation are in substance the same as those

> resolved (in the prior litigation); Second, whether controlling facts or legal principles have changed significantly since (the prior decision); and finally, whether other special circumstances warrant an exception to the normal rules of preclusion. 440 U.S. 147 at 155, 99 S.Ct. 970 at 974, 59 L.Ed. 2d 210 (1979).

The Commissioner submits that the doctrine of collateral estoppel in the present appeal clearly passes the 3-pronged test enunciated in *Montana v. U.S., supra.* The issues presented in the present appeal and the facts are virtually identical to those issues and facts contained in *Exxon Corporation v. Eagerton, supra.* Secondly, the Commissioner submits that there could not have been any significant change in legal principles since June 8, 1983 to justify not applying the doctrine of collateral estoppel. Finally, the Commissioner asserts that no special circumstances have arisen which would warrant an exception to the normal rules of preclusion by collateral estopel since this Court announced its decision in *Exxon Corporation v. Eagerton, supra.*

B. MOOT

The "substantial questions" raised by Appellants Exxon Corporation and Louisiana Land and Exploration in the present appeal have been fully considered and answered by this Honorable Court in *Exxon Corporation v. Eagerton,* 51 U.S.L.W. 4700 (U.S. June 8, 1983), and are now moot.

II. Conclusion

In view of the foregoing arguments and cited authori-

ties presented herein, Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, hereby moves this Honorable Court to grant his Motion to Dismiss this appeal due to the Appellants Exxon Corporation and the Louisiana Land and Exploration Company being collaterally estopped from relitigating the issues presently asserted which have previously been decided, and the issues raised by the Appellants in this appeal are now moot.

Respectfully submitted,

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No. 82-1821

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

EXXON CORPORATION
AND THE LOUISIANA LAND
AND EXPLORATION COMPANY,
Appellants

v.

RALPH P. EAGERTON, JR., as Commissioner
of Revenue of the State of Alabama,
Appellee,

PROOF OF SERVICE

I, John J. Breckenridge, Jr., as Member of the Bar of the Supreme Court of the United States, and one of the attorneys for the Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama hereby certify that on the 2nd day of August, 1983, I served copies of the foregoing Motion to Dismiss on all parties required to be served as follows: on Appellants herein, Exxon Corporation and the Louisiana Land and Exploration Company, by depositing a copy in the United States Mail, with first-class postage prepaid, addressed to:

To C.B. Arendall, Jr., Esquire
Attorney for Exxon Corporation and
The Louisiana Land and Exploration Company
P.O. Box 123
Mobile, Alabama 36601;

To Louis E. Braswell, Esquire
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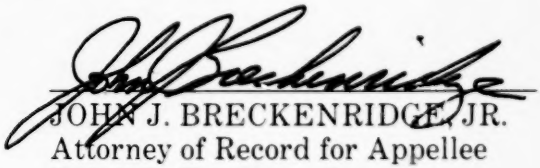

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No. 82-1821

IN THE

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OCTOBER TERM, 1982

EXXON CORPORATION
AND
THE LOUISIANA LAND AND EXPLORATION COMPANY,

Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

APPENDIX

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SUPREME COURT OF THE UNITED STATES

Nos. 81-1020 and 81-1268

EXXON CORPORATION, ET AL., APPELLANTS
81-1020 *v.*
RALPH EAGERTON, JR., COMMISSIONER OF REVENUE OF ALABAMA, ET AL.

EXCHANGE OIL AND GAS CORPORATION, ET AL., APPELLANTS
81-1268 *v.*
RALPH P. EAGERTON, JR., COMMISSIONER OF REVENUE OF THE STATE OF ALABAMA

ON APPEALS FROM THE SUPREME COURT OF ALABAMA

[June 8, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

This case concerns an Alabama statute which increased the severance tax on oil and gas extracted from Alabama wells, exempted royalty owners from the tax increase, and prohibited producers from passing on the increase to their purchasers. Appellants challenge the pass-through prohibition and the royalty-owner exemption under the Supremacy Clause, the Contract Clause, and the Equal Protection Clause.

I

Since 1945 Alabama has imposed a severance tax on oil and gas extracted from wells located in the State. Code of Ala. §40-20-1 *et seq.* The tax "is levied upon the

producers of such oil or gas in the proportion of their ownership at the time of severance, but ...shall be paid by the person in charge of the production operations." §40-20-3(a).[1] The person in charge of production operations is "authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments of such producers." §40-20-3(a). The statute defines a "producer" as "[a]ny person engaging or continuing in the business of oil or gas production," including

> "the owning, controlling, managing, or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas ... and ... receiving money or other valuable consideration as royalty or rental for oil or gas produced ..." §40-20-1(8).

In 1979 the Alabama Legislature enacted Act 79-434, which increased the severance tax from 4% to 6% of the gross value of the oil and gas at the point of production. Whereas the severance tax had previously fallen on royalty owners in proportion to their interests in the oil or gas produced, the amendment specifically exempted royalty owners from the tax increase:

> "Any person who is a royalty owner shall be

---

[1]The amount of tax that is due and payable constitutes "a first lien upon any of the oil or gas so produced when in the possession of the original producer or any purchaser of such oil or gas in its unmanufactured state or condition." §40-02-3(a).

> exempt from the payment of any increase in taxes herein levied and shall not be liable therefor." Acts 1979, No. 79-434, p. 687, §1, Ala. Code §40-20-2(d), *as amended*.

The amendment also prohibited producers from passing the tax increase through to consumers:

> "The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly to the consumer; it being the express intent of this act that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas." Acts 1979, No. 79-434, p. 687, §1.

The amendment became effective on September 1, 1979. The pass-through prohibition was repealed on May 28, 1980. Acts 1980, No. 80-708, p. 1438.

Appellants in both 81-1020 and 81-1268 have working interests in producing oil and gas wells located in Alabama.[2] They drill and operate the wells and are responsible for selling the oil and gas extracted. Appellants are obligated to pay the landowners a percentage of the sale proceeds as royalties, the percentage depend-

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[2]Appellants in 81-1020 are Exxon Corp., Gulf Oil Corp., and the Louisiana Land and Exploration Co. Appellants in 81-1268 are Exchange Oil and Gas Corp., Getty Oil Co., and Union Oil Co. of California.

ing upon the provisions of the applicable lease. Within any given production unit, there may be tracts of land which the owners of the land have leased to nonworking interests, who are also entitled to a share of the sale proceeds. Appellants were parties to contracts providing for the allocation of severance taxes among themselves, the royalty owners, and any non-working interests in proportion to each party's share of the sale proceeds. Appellants were also parties to sale contracts that required the purchasers to reimburse them for any and all severance taxes on the oil or gas sold.

After paying the 2% increase in the severance tax under protest, appellants and eight other oil and gas producers filed suit in the Circuit Court of Montgomery County, Alabama, seeking a declaratory judgment that Act 79-434 was unconstitutional and a refund of the taxes paid under protest. The Circuit Court ruled in favor of appellants, concluding that both the royalty-owner exemption and the pass-through prohibition violate the Equal Protection Clause and the Contract Clause, and that the pass-through prohibition is also preempted by the Natural Gas Policy Act of 1978 (NGPA), 15 U. S. C. §3301 *et seq.* (Supp. IV). Although Act 79-434 contained a severability clause, the court held the entire Act invalid and ordered appellee, the Commissioner of Revenue of the state of Alabama, to refund the taxes paid under protest. The Supreme Court of Alabama reversed, holding Act 79-434 valid in its entirety. 404 So. 2d 1 (1981).

Appellants appealed to this Court under 28 U. S. C. §1257(2). We noted probable jurisdiction. 456 U. S. 970

(1982). We now affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

II

We deal first with appellants' contention that the application of the pass-through prohibition to gas was preempted by federal law.[3] The applicable principles of preemption were recently summarized in *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, ___ U. S. ___, ___ (1983):

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[3]The Supremacy Clause of the Constitution provides that "[t]his Constitution, and the laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Art. VI, cl. 2.

Although appellants in 81-1268 also contend that the application of the pass-through prohibition to oil was preempted by the Emergency Petroleum Act of 1973 (EPAA), 15 U. S. C. §*751 et seq.* (1976 ed & Supp. IV), and the regulations promulgated thereunder, we conclude that we have no jurisdiction to consider this contention. The decision below does not discuss this issue, and when "The highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Fuller v. Oregon*, 417 U. S. 40, 50 n. 11 (1974), quoting *Street v. New York*, 394 U. S. 576, 582 (1969). No such showing has been made here. Although appellants in 81-1268 have represented to this Court that the trial court held the pass-through prohibition to be preempted by the EPAA, Juris. Stmt. at 3, and examination of the trial court opinion reveals that in fact the court made no mention of the EPAA. Nor does anything in the record before us indicate that this issue was raised in the trial court. Appellants did address the EPAA in their brief before the Supreme

> "Absent explicit preemptive language, Congress intent to supercede state law altogether may be found from a 'scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' 'because the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,' or 'because the object sought to be obtained by federal law and the character of obligations imposed by it may reveal the same purpose.'

Court of Alabama. Brief of Appellees Exchange Oil and Gas Corp., Getty Oil Co., Placid Oil Co., Union Oil Co. of California, at 51-53, but that court did not pass on the issue. Under these circumstances we have no jurisdiciton to consider whether the EPAA preempted the application of the pass-through prohibition to oil, for it does not affirmatively appear that that issue was decided belwo. *Bailey v. Anderson*, 326 U. S. 203, 206-207 (1945). The general practice of the Alabama appellate courts is not to consider issues raised for the first time on appeal. Se, *e. g., State v. Newberry*, 336 So. 2d 181, 182 (1976); *State v. Graf*, 189 So. 2d 912, 913 (1966); *Burton v. Burton*, 379 So. 2d 617, 618 (Ct. Civ. App. 1980); *Crews v. Houston City Dept. of Pensions & Security*, 358 So. 2d 451, 455 (Ct. Civ. App. (1978), cert. denied, 358 So. 2d 456.

Appellants in 81-1268 have also burdened this Court with a labored argument that they were denied due process by the Supreme Court of Alabama's refusal to consider the legislative history of the 1979 amendments to the State severance tax, a history which, according to appellants, shows that those amendments were intended to apply only to certain wells located in one county in the State and not to apply statewide. Suffice it to say that the weight to be given to the legislative history of an Alabama statute is a matter of Alabama law to be determined by the Supreme Court of Alabama.

> *Fidelity Federal Savings & Loan Assn. v. de la Cuesta*, ___ U. S. ___, ___ (1982); *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). Even where Congress has not entirely displaced state regulation in a specific area, state law is preempted to the extent that it actually conflicts with federal law. Such a conflict arises when 'compliance with both federal and state regulations is a physical impossibility,' *Florida Lime & Avocado Growers, Inc. v. Paul, 373 U. S. 132, 142-143 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.' Hines v. Davidowitz*, 312 U. S. 52, 67 (1941)."

Appellants contend that the pass-through prohibition was in conflict with §110(a) of the NGPA, 15 U. S. C. §3320(a) (Supp. V), which provides in pertinent part as follows:

> "***a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover—
>
> (1) State severance taxes attributable to the production of such natural gas and borne by the seller***."

We agree with the Supreme Court of Alabama[4] that the pass-through prohibition did not conflict with this provision. On its face §110(a) of the NGPA does not give any seller the affirmative right to include in his price an

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[4]See 404 So. 2d. at 6:

"Nowhere in that section [§3320 of the NGPA] is it stated that the oil companies are entitled to 'pass-through' increases on state severance taxes. Rather, the Act merely provides that the lawful ceiling on the first sale at the wellhead may be raised if a severance tax is imposed by the states. The two Acts are aimed at entirely different purposes. In other words, although it would be perfectly permissible for the oil and gas companies to raise the price for the first sale of natural gas, subject to the limitations of the Natural Gas Policy Act, all that Act No. 79-434 requires is that the increase in severance tax mandated by that Act be borne by the producer or severer of the oil or gas."

Relying on this passage, appellee contends that the pass-through prohibition did not bar a producer from increasing its price by an amount equal to the increase in the severance tax, provided that the producer did not label that increase a tax:

"The Commisisoner believes that the seller may include in the lawful maximum price an amount equal to Alabama's severance taxes borne by the seller resulting from the production of natural gas. The Commissioner believes that it was the intent of the Alabama Legislature in adopting the pass-through prohibition that it did not want to be perceived as levying an additional tax on the consumer. Therefore it prohibited anyone from passing along the increase levied by Act 79-434 *as a tax*." Brief at 16-17 (emphasis in original).

We do not agree with appellee that the Supreme Court of Alabama interpreted the pass-through prohibition to leave sellers free to pass through the tax increase so long as they did not tell their customers that that is what they were doing. The statute contains no language that would suggest this limitation, and as we understand the opinion below, the point of the passage relied upon by appellee was only that the pass-through prohibition did not conflict with federal law.

amount necessary to recover state severance taxes. It simply provides that a seller who does include such an amount in his price shall not be deemed to have exceeded the federal price ceiling if he would not have exceeded it had that amount not been included. Nothing in the legislative history of the NGPA has been called to our attention to indicate that §110(a) was intended to have a greater effect than its language would indicate.[5]

Although the pass-through prohibition thus was not in conflict with §110(a) of the NGPA, we nevertheless conclude that it was preempted by federal law insofar as it applied to sales of gas in interstate commerce. To that extent, the pass-through prohibition represented an attempt to legislate in a field that Congress has chosen to occupy. The Natural Gas Act (Gas Act), 52 Stat. 821, *as amended*, 15 U. S. C. §§717-717w (1976 ed. & Supp. III), was enacted in 1938 "to provide the Federal Power Commission, now the FERC, with authority to regulate the wholesale pricing of natural gas in the flow of interstate commerce from wellhead to delivery to consumers." *Maryland v. Louisiana*, 451 U. S. 725, 748 (1981). As we have previously recognized, *e. g.*, *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, 682-683 (1954); *id.*, at 685-687 (Frankfurter, J., concurring), the Gas Act was intended to occupy the field of wholesale

[5]Although the United States and the Federal Energy Regulatory Commission (FERC) point in their *amicus* brief to the statement in the Conference Report that "[a]ll ceiling prices under this Act are exclusive of State severance taxes borne by the seller. . . ." H. R. Conf. Rep. no. 95-1752, 95th Cong., 2d Sess. 90 (1978), we do not see how this statement supports their position that the pass-through prohibition was in conflict with §110(a).

sales of natural gas in interstate commerce, a field which had previously been left largely unregulated as a result of the absence of federal action and decisions of this Court striking down state regulation of sales of natural gas in interstate commerce. The committee reports on the bill that became the Gas Act clearly evidence this intent:

> "[S]ales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) ... have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. *The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act.*" H. R. Rep. No. 709, 75th Cong., 1st Sess. 1-2; S. Rep. No. 1162, 75th Cong., 1st Sess. 1-2 (citations ommitted) (emphasis added).

The Alabama pass-through prohibition trespassed upon FERC's authority over wholesale sales of gas in interstate commerce, for it barred gas producers from increasing their prices to pass on a particular expense — the increase in the severance tax — to their purchasers. Whether or not producers should be permitted to recover this expense from their purchasers is a matter within the sphere of FERC's regulatory authority. See *FPC v. United Gas Pipe Line Co.*, 386 U. S. 237, 243 (1967) (emphasis added):

> "One of [the FPC's] statutory duties is to determine just and reasonable rates which will be

> sufficient to permit the company to recover its costs of service and a reasonable return on its investment. Cost of service is therefore a major focus of inquiry. *Normally included as a cost of service is a proper allowance for taxes ...*"

Here, as in *Maryland v. Louisiana*, the state statute "interfere[d] with the FERC's authority to regulate the determination of the proper allocation of costs associated with the sale of natural gas to consumers." 451 U. S., at 749. Just as the statute at issue in *Maryland v. Louisiana* was preempted because it effectively "shift[ed] the incidence of certain expenses ... to the ultimate consumer of the processed gas without the prior approval of the FERC," *id.*, at 750, Alabama's pass-through prohibition was preempted, insofar as it applied to sales of gas in interstate commerce, because it required that certain expenses be absorbed by producers.

We reach a different conclusion with respect to the application of the pass-through prohibition to sales of gas in intrastate commerce.[6] Although §105(a) of the

[6]The parties stipulated that a substantial portion of the gas extracted by appellants was sold in interstate commerce. JA 78, 184-185. Because the trial court concluded that the pass-through prohibition was in conflict with §110(a) of the NGPA, it did not determine how much of the taxes at issue in this case were levied on gas sold in intrastate and interstate commerce. If, on remand, when the Supreme Court of Alabama inquires into the question of severability, see *infra*, at 20, that court holds that the Alabama Legislature would have intended to impose the tax increase on the severance of gas if and only if the increase could not be passed through to consumers when the gas is sold, such a determination may have to be made.

NGPA extended federal authority to control prices to the intrastate market, 15 U. S. C. §3315(a), Congress also provided that this extension of federal authority did not deprive the States of the power to establish a price ceiling for intrastate producer sales of gas at a level lower than the federal ceiling. Section 602(a) of the NGPA, 15 U. S. C. §3432(a) (Supp. IV), states that

> "[n]othing in this chapter shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State which does not exceed the applicable maximum lawful price, if any, under subchapter I of this chapter."

See *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, ___ U. S. ___, ___ (1983) (in enacting the NGPA, "Congress explicitly envisioned that the States would regulate intrastate markets in accordance with the overall national policy").

Since a State may establish a lower price ceiling, we think it may also impose a severance tax and forbid sellers from passing it through to their purchasers. For sellers charging the maximum price allowed by federal law, a State tax increase coupled with a pass-through prohibition will not differ in practical effect from a State tax increase coupled with the imposition of a State price ceiling imposed by federal law prior to the tax increase. In both cases sellers are required to absorb expenses that they might be able to pass through to their customers absent the State restrictions. Given the absence of any express preemption provision in the NGPA and Con-

gress' express approval of one form of state regulation, we do not think it can fairly be inferred that Congress contemplated that the general scheme created by the NGPA would preclude another form of state regulation that is no more intrusive.[7]

We conclude that the pass-through prohibition was preempted by federal law insofar as it applied to sales of gas in interstate commerce, but not insofar as it applied to producer sales of gas in intrastate comemrce.

III

We turn next to appellants' contention that the royalty-owner exemption and the pass-through prohibition impaired the obligations of contracts in violation of the Contract Clause.[8]

A

Appellants' Contract Clause challenge to the royalty-owner exemption fails for the simple reason that there is nothing to suggest that that exemption nullified any

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[7]We note that this case does not involve any attempt by a State to prohibit gas producers from passing through the cost of a factor of production such as labor or machinery. Such as labor or machinery. Such a prohibition might raise additional considerations not present here because of the inducement it would create for producers to shift away from the factor of production to which the pass-through prohibition applied.

[8]The Contract Clause provides that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts. ..." U. S. Const., Art. I, §10, cl. 1.

contractual obligations of which appellants were the beneficiaties.[9] The relevant provision of Act 79-434 states that "[a]ny person who is a royalty owner shall be

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[9]The contracts into which appellants had entered appear to entitle them to reimbursement from the royalty owners for a share of any severance tax paid by appellants in proportion to the royalty owners' interest in the oil or gas, regardless of whether state law imposes that tax on the producer or on the royalty owner. Appellants cite the following contractual provisions as typical of the agreements which they contend are impaired by the royalty-owner exemption: "Lesser shall bear and pay, and there shall be deducted from the royalties due hereunder, Lessor's proportionate royalty share of: "(a) All applicable severance, production and other such taxes levied or imposed upon production from the leased premises." JA76-77.

"LESSOR AND LESSEE shall bear in proportion to their respective participation in the production hereunder, all taxes elvied on minerals covered hereby or any part thereof, or on the severance or production thereof, and all increases in taxes on the lease premises or any part thereof." JA184. These provisions would seem to entitle appellants to recover from the royalty owners a portion of the tax increase in proportion to the royalty owners' interests in the proceeds of the oil or gas sold by appellants, regardless of the legal incidence of the tax increase.

Even if these contractual provisions were to be interpreted to entitle appellants to reimbursement only for that portion of the severance tax which state law itself imposed on the royalty owners, appellants would still have no objection under the contract Clause. In that event, the increase in the severance tax would be absorbed by appellants not because the State has nullified any contractual obligation, but simply because the provisions as so interpreted would impose no obligation on the royalty owners to reimburse appellants for the tax increas.

Since appellants have not shown that the royalty-owner exemption affects anything other than the legal incidence of the tax increase, their contention that the exemption is preempted by the Natural Gas Act and the NGPA is plainly without merit.

exempt from the payment of any increase in taxes levied and shall not be liable therefor." On its face this portion of the Act provides only that the legal incidence of the tax increase does not fall on royalty owners, i. e., the State cannot look to them for payment of the additional taxes. In contrast to the pass-through prohibition, the royalty-owner exemption nowhere states that producers may not shift the burden of the tax increase in whole or in part to royalty owners. Nor is there anything in the opinion below to suggest that the Supreme Court of Alabama interpreted the exemption to have this effect. We will not strain to reach a constitutional question by speculating that the Alabama courts might in the future interpret the royalty-owner exemption to forbid enforcement of a contractual arrangement to shift the burden of the tax increase. See *TVA v. Ashwander*, 297 U. S. 288, 346-347 (1936) (Brandeis, J., concurring).

B

Unlike the royalty-owner exemption, the pass-through prohibition did restrict contractual obligations of which appellants were the beneficiaries. Appellants were parties to sale contracts that permitted them to include in their prices any increase in the severance taxes that they were required to pay on the oil or gas being sold.[10] The contracts were entered into before the pass-through prohibition was enacted and their terms

[10]For exmaple, appellant Union Oil Co. was a party to a contract concerning oil under which the purchaser was required to reimburse it for "100 percent of the amount by which any severance taxes paid by seller are in excess of the rates of such taxes levied as of April 1, 1976." JA184.

extended through the period during which the prohibition was in effect. By barring appellants from passing the tax increase through to their purchasers, the pass-through prohibition nullified *pro tanto* the purchasers' contractual obligations to reimburse appellants for any severance taxes.

While the pass-through prohibition thus affects contractual obligations of which appellants were the beneficiaries, it does not folow that the prohibition constituted a "Law impairing the Obligations of Contracts" within the meaning of the Contract Clause. See *United States Trust Co. v. New Jersey*, 431 U. S. 1, 21 (1977). "Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.' " *Energy Reserves Group v. Kansas Power & Light Co.*, *supra*, at ____, quoting *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U. S. 398, 434 (1934). This Court has long recognized that a statute does not violate the Contract Clause simply because it has the effect of restricting, or even barirng altogether, the performance of duties created by contracts entered into prior to its enactment. See *Allied Structural Steel Co. v. Spannaus*, 438 U. S. 234, 241-242 (1978). If the law were otherwise, "one would be able to obtain immunity from state regulation by making private contractual arrangements." *United States Trust Co. v. New Jersey*, *supra*, at 22.

The Contract Clause does not deprive the States of their "broad power to adopt general regulatory measures without being concerned that private contracts will be

impaired, or even destroyed, as a result." *United States Trust Co. v. New Jersey, supra,* at 22. As Justice Holmes put it, "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity fo the subject matter." *Hudson Co. v. McCarter,* 209 U. S. 349, 357 (1908) (Holmes, J.).[11] Thus, a state prohibition law may be applied to contracts for the sale of beer that were valid when entered into, *Beer Co. v. Massachusetts,* 97 U. S. 25 (1878), a law barring lotteries may be applied to lottery tickets that were valid when issued, *Stone v. Mississippi,* 101 U. S. 814 (1880), and a workmen's compensation law may be applied to employers and employees operating under pre-existing contracts of employment that made no provision for work-related injuries, *New York Central*

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[11]This point was aptly stated in an early decision holding that a statute prohibiting the issuance of notes by unincorporated banking associations did not violate the Contract Clause by preventing the performance of existing contracts entered into by members of such associations:

"[I]t is said that the members had formed a contract between themselves, which would be dissolved by the stoppage of their business. And what then? Is that such a violation of contracts as is prohibited by the Constitution of the United States? Consider to what such a construction would lead. Let us suppose, that in one of the states there is no law agianst gaming, cock-fighting, horse-racing, or public masquerades, and tat companies should be formed for the purpose of carrying on these practices. And suppose, that the legislature of that state, being seriously convinced of the pernicious effect of these institutions, should venture to interdict them: will it be seriously contended, that the Constitution of the United States has veen violated?" *Myers v. Irwin,* 2 S. & R. (Pa.) 367, 372 (1816).

R. Co. v. White, 243 U. S. 188 (1917).[12]

Like the laws upheld in these cases, the pass-through prohibition did not prescribe a rule limited in effect to contractual obligations or remedies, but instead imposed a generally applicable rule of conduct designed to advance "a broad societal interest," *Allied Structural Steel Co., supra* at 249: protecting consumers from excessive prices. The prohibition applied to all oil and gas producers, regardless of whether they happened to be parties to sale contracts that contained a provision permitting them to pass tax increases through to their purchasers. The effect of the pass-through prohibition on existing contracts that did contain such a provision was incidental to its main effect of shielding consumers form the burden of the tax increase. Cf. *Henderson Co. v. Thompson*, 300 U. S. 258, 266 (1937); *Beer Co. V. Massachusetts, supra*, at 32.

Because the pass-through prohibition imposed a

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[12]See generally *Home Bldg. & Loan Assn. v. Blaisdell, supra*, at 436-437; *id.*, at 475-477 (Sutherland, J., dissenting); *Dillingham v. McLaughlin*, 264 U. S. 370, 374 (1924) ("The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future.") (Holmes, J.); *Manigault v. Springs*, 199 U. S. 473, 480 (1905) ("parties by entering into contracts may not estop the legislature from enacting laws intended for the public good"); *Ogden v. Saunders*, 25 U. S. 213, 291 (1827) (when "laws are passed rendering that unlawful, even incidentally, which was lawful at the time of the contract ... it is the government that puts an end to the contract, and yet no one ever imagined that it thereby violates the obligation of contract"); Hale, The Supreme Court and the Contract Clause: II, 57 Harv. L. Rev. 621, 671-674 (1944)

generally applicable rule of conduct, it is sharply distinguishable from the measures struck down in *United States Trust Co. v. New Jersey*, *supra*, and *Allied Structural Steel Co. V. Spannaus*, *supra*. *United States Trust Co.* involved New York and New Jersey statutes whose sole effect was to repeal a convenant that the two States had entered into with the holders of bonds issued by The Port Authority of New York and Jersey.[13] Similarly, the statute at issued in *Allied Structural Steel Co.* directly " 'adjust[ed] the rights and responsibilities of contracting parties.' " 438 U. S., at 244, quoting *United States Trust Co. v. New Jersey*, *supra*, at 22. The statute required a private employer that had contracted with its employees to provide pension benefits to pay additional benefits, beyond those it had agreed to provide, if it terminated the pension plan or closed a Minnesota office. Since the statute applied only to employers that had entered into pension agreements, its sole effect was to alter contractual duties. Cf. *Worthen Co. v. Kavanaugh*, 295 U. S. 56 (1935) (statute which drastically limited the remedies available to mortgagees held invalid under the Contract Clause).

Alabama's power to prohibit oil and gas producers from passing the increase in the severance tax on to their purchasers is confirmed by several decisions of this Court rejecting Contract Clause challenges to state rate-setting schemes that displaced any rates previously

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[13]The statutes under review in *United States Trust Co.* also implicated the special concerns associated with a State's impairment of its own contractual obligations. See 431 U. S., at 25-28; *Energy REserves Group v. Kansas Power & Light Co.*, *supra*, at ____ and n. 14.

established by contract. In *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U. S. 109 (1937), it was held that a party to a long-term contract with a utility could not invoke the Contract Clause to obtain immunity from a state public service commission's imposition of a rate for steam heating that was higher than the rate established in the contract. The Court declared that "the State has power to annul and supercede rates previously established by contract between utilities and their customers." *Id.*, at 113 (footnote omitted). In *Union Dry Goods Co. v. Georgia Public Service Corp.*, 248 U. S. 372 (1919), the Court rejected a Contract Clause challenge to an order of a state commission setting the rates that could be charged for supplying electric light and power, nowithstanding the effect of the order on pre-existing contracts. *Accord, Stephenson v. Binford*, 287 U. S. 251 (1932) (upholding law which barred private contract carriers from using the highways unless they charged rates which might exceed those they had contracted to charge).

Producers Transportation Co. v. R. Comm'n, 251 U. S. 228 (1920), is particularly instructive for present purposes. In that case the Court upheld an order issued by a state commission under a newly enacted statute empowering the commission to set the rates that could be charged by individuals or corporations offering to transport oil by pipeline. The Court rejected the contention of a pipeline owner that the statute could not override preexisting contracts:

> "That some of the contracts . . . were entered into before the statute was adopted or the order made

> is not material. A common carrier cannot by making contracts for future transportation or by mortgaging its property or pledging its income prevent or postpone the exertion by the State of the power to regulate the carrier's rates and practices. Nor does the contract clause of the Constitution interpose any obstacle to the exertion of that power." *Id.*, at 232.

There is no material difference between *Producers Transportation Co.* and the case before us. If a party that has entered into a contract to transport oil is not immune from subsequently enacted state regulation of the rates that may be charged for such transportation, parties that have entered into contracts to sell oil and gas likewise are not immune from state regulation of the prices that may be charged for those commodities. And if the Contract Clause does not prevent a State from dictating the price that sellers may charge their customers, plainly it does not prevent a State from requiring that sellers absorb a tax increase themselves rather than pass it through to their customers. If one form of state regulation is permissible under the Contract Clause notwithstanding its incidental effect on pre-existing contracts, the other form of regulation must be permissible as well.[14]

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[14]Our conclusion is buttressed by the fact that appellants operate in industries that have been subject to heavy regulation. See *Energy Reserves Group v. Kansas Power & Light Co.*, *supra*, at ___ ("Price regulation existed and was foreseeable as the type of law that would alter contractual obligations."); *Veix v. Sixth Ward Bldg & Loan Assn.*, 310 U. S. 32, 38 (1940) ("When he purchased into an

Finally, we reject appellants' equal protection challenge to the pass-through prohibition and the royalty-owner exemption. Because neither of the challenged provisions adversely affects a fundamental interest, see, *e. g., Dun v. Blumstein*, 405 U. S. 330, 336-342 (1972), *Shapiro v. Thompson*, 394 U. S. 618, 629-631 (1969), or contains a classification based upon a suspect criterion, see, *e. g., Graham v. Richardson*, 403 U. S. 365, 372 (1971); *McLaughlin v. Florida*, 379 U. S. 184, 191-192 (1964), they need only be tested under the lenient

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enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic.").

With respect to gas, see *supra*, at 8-10; *Energy Reserves Group v. Kansas Power & Light Co.*, *supra*, at ____ — ____ . During the time the pass-through prohibition was in effect, the federal government controlled the prices of crude oil under the Emergency Petroleum Allocation Act (EPAA), 15 U. S. C. 751 *et seq.* (1976 ed. and Supp. IV). Regulations promulgated under the EPAA established maximum prices for most categories of crude oil. 10 CFR 212, Subpart D—Producers of Crude Oil, 212.71 *et seq.*

Appellants' reliance on *Barwise v. Sheppard*, 299 U. S. 33 (1936), is misplaced. In *Barwise* the owners of royalty interests challenged a Texas statute that imposed a new tax on oil production, which was to be borne "ratably by all interested parties including royalty interests." The statute authorized the producers to pay the tax and withhold from any royalty owners their proportionate share of the tax. The royalty owners in *Barwise* were parties to contracts that entitled them to specified shares of the oil produced by their lessee and required the lessee to deliver the oil "free of cost." *Id.*, at 35. They contended that the statute, by authorizing the lessee to deduct their portion of the tax from any payments due them, impermissibly impaired the lessee's obligation to deliver the oil "free of cost." This Court concluded that the statute did not run afoul of the Contract Clause:

"[T]he lease was made in subordination to the power of the State to

standard of rationality that this Court has traditionally applied in considering equal protection challenges to regulation of economic and commercial matters. See, *e. g., Western & Southern Life Ins. Co. v. State Board of Equalization*, 451 U. S. 648, 668 (1981); *Minnesota v. Clover Leaf Cemetery Co.*, 449 U. S. 456, 461-463 (1981); *Kotch v. Board of River Pilot Comm'rs*, 330 U. S. 552, 564 (1947). Under that standard a statute will be sustained if the legislature could have reasonable concluded that the challenged classification would promote a legitimate state purpose. See, *e. g., Western & Southern Life Ins. Co., supra*, at 668; *Clover Leaf Cemetery Co., supra*, at 461-462, 464.

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tax the production of oil and to apportion the tax between the lessors and the lessee. ... Plainly no stipulation in the lease can be of any avail as aginst the power of the state to impose the tax, prescribe who shall be under a duty to the state to pay it, and fix the time and mode of payment. And this is true even though it be assumed to be admissible for the lessors and lessee to stipulate as to who, as between themselves, shall ultimately bear the tax." *Id.*, at 40.

We reject appellant's assertion that the last sentence of this quotation was meant to indicate that the statute would have violated the Contract Clause if, instead of simply specifying the legal incidence of the tax, it had nullified an agreement as to who would ultimately bear the burden of the tax. We think the thrust of the sentence was simply that even though the law left the lessors and the lessee free to allocate the ultimate burden of the tax as they saw fit, no agreement between them could limit the State's power to decide who must pay the tax and to specify the time and manner of payment.

Barwise is relevant to this case only insofar as it confirms Alabama's power to decide that no part of the legal incidence of the increase in the severance tax would fall on owners of royalty interests. See Part III—A, *supra*.

We conclude that the measures at issue here pass muster under this standard. The pass-through prohibition plainly bore a rational relationship to the State's legitimate purpose of protecting consumers from excessive prices. Similarly, we think the Alabama Legislature could have reasonably determined that the royalty-owner exemption would encourage investment in oil or gas production. Our conclusion with respect to the royalty-owner exemption is reinforced by the fact that that provision is solely a tax measure. As we recently stated in *Regan v. Taxation with Representation of Washington*, ___ U. S. ___, ___ (1983), "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes." See *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 359 (1973); *Allied Stores of Ohio v. Bowers*, 358 U. S. 522, 526-527 (1959).

V

For the foregoing reasons, we conlude that the application of the pass-through prohibition to sales of gas in interstate commerce was preempted by federal law, but e uphold both the pass-through prohibition and the royalty-owner exemption against appellants' challenges under the Contract Clause and the Equal Protection Clause. Since the severability of the pass-through prohibiton from the remainder of the 1979 amendments is a matter of state law, we remand to the Supreme Court of Alabama for that court to determine whether the partial invalidity of the pass-through prohibition entitles appellants to a refund of some or all of the taxes paid under protest. See note 6, *supra*. Accordingly, the

judgment of the Supreme Court of Alabama is affirmed in part, reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.